

United States
Circuit Court of Appeals
For the Ninth Circuit.

POLSON LOGGING COMPANY, a Corporation,
Plaintiff in Error,
vs.

GUSTAVE H. NEUMEYER and ABRHAM J.
DIMOND, Copartners Doing Business Under
the Name and Style of NEUMEYER &
DIMOND,
Defendants in Error.

Transcript of Record.

Upon Writ of Error to the United States District
Court of the Western District of Washington,
Southern Division.

Filed

APR 20 1915

F. D. Monckton,
Clerk.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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Names and Addresses of Attorneys.

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and

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Washington,

Attorneys for Defendant and Plaintiff in
Error. [1*]

*In the United States District Court for the Western
District of Washington, Southern Division.*

No. —.

POLSON LOGGING COMPANY, a Corporation,
Plaintiff in Error,

vs.

GUSTAVE H. NEUMEYER, and ABRHAM J.
DIMOND, Copartners, Doing Business Under
the Name and Style of NEUMEYER & DI-
MOND,

Defendants in Error.

Praecipe for Transcript.

To the Clerk of the Above-entitled Court:

You will please prepare and certify to constitute

*Page-number appearing at foot of page of original certified Record.

the transcript of record in the above cause, type-written copies of the following papers, omitting all captions, verifications, acceptances of service and other endorsements, excepting file marks. I hereby waive the provisions of the Act of February, 1911, in reprinting of transcripts on appeal:

1. Complaint;
2. Answer;
3. Reply;
4. Judgment;
5. Motion for Judgment Notwithstanding Verdict;
6. Order Denying Above Motion;
7. Motion for New Trial;
8. Order Denying Above Motion;
9. Order Extending Time for Filing Bill of Exception;
10. Bill of Exceptions and Order Settling;
11. Petition for Writ of Error and Allowance;
12. Assignments of Error;
13. Bond on Writ of Error and Approval;
14. And that no exhibits be copied but that the original exhibits be sent to the Circuit Court of Appeals with the transcript, for the examination of that Court.

BRIDGES & BRUENER,

Attorneys for Plaintiff in Error.

(Filed Feb. 2, 1915.) [2]

*United States District Court, Western District of
Washington, Southern Division.*

No. 1507.

GUSTAVE H. NEUMEYER, and ABRHAM J.
DIMOND, Copartners, Doing Business Under
the Name and Style of NEUMEYER & DI-
MOND,

Plaintiffs,

vs.

POLSON LOGGING COMPANY, a Corporation,
Defendant.

Complaint.

Plaintiffs, for cause of action against defendant,
allege:

I.

That Gustave H. Neumeyer and Abrham J. Dimond, at all times hereinafter mentioned, were, and are now copartners doing business under the name and style of Neumeyer & Dimond; that their principal place of business is in New York City, State of New York; that under the laws of New York they are competent and qualified to maintain this action.

II.

That Polson Logging Company, at all times hereinafter mentioned, was and is now a corporation organized and existing under and by virtue of the laws of the State of Washington with its principal place of business at Hoquiam, Washington.

III.

That plaintiffs, at all times hereinafter mentioned were and now are citizens and residents of the State of New York; that defendant, at all times hereinafter mentioned, was and is now a citizen and resident of the State of Washington; that the amount involved in this controversy exceeds the sum of Three Thousand and no/100 (\$3,000.00) Dollars, exclusive of interest and costs. [3]

IV.

That on or about the 11th day of September, 1912, defendant gave plaintiffs, and plaintiffs accepted from defendant, a certain order for goods, wares, and merchandise (a copy of which is hereto attached and marked "Exhibit A"), of the agreed and reasonable value of Three Thousand Eight Hundred Ninety-five and 39/100 (\$3,895.39) Dollars, and plaintiffs thereupon delivered to defendant said goods, wares and merchandise in accordance with said order at Hoquiam, Washington.

V.

That defendant, although requested, refused and refuses to pay plaintiffs for the agreed and reasonable value of said merchandise, namely \$3,895.39, or any part thereof; that the same is due, owing and unpaid to plaintiff together with interest thereon at the rate of six per cent per annum from March 6th, 1913, being thirty days after date of shipment, until paid.

WHEREFORE, plaintiffs demand judgment against defendant in the sum of \$3,895.39, together with interest thereon at the rate of six per cent per

annum from March 6th, 1913, until paid and for their taxable costs and disbursements as provided by law.

JOHN W. ROBERTS,

NELSON R. ANDERSON,

Attorneys for Plaintiffs.

(Verification.) [4]

No. 2012.

Sept. 11th, 1912.

NEUMEYER & DIMOND, NEW YORK.

Enter our order for the following:

When Ship—Soon as possible.

Ship to—Polson Logging Company, Hoquiam, Washington.

Send bill to—Same.

- | | | | |
|----|------|------------|---|
| 3 | bars | 11½"x21½" | Swivel Steel |
| 2 | bars | each 2" | Rd. 1-3/8" Rd. Clevis Steel |
| 1 | " | 21¼" | Round Swivel Eye Steel |
| 7 | " | 11¼x41½" | Chaker Hook |
| 2 | bars | each 11¼" | Rd.-21½" Rd. Block Hook Steel |
| 2 | " | 21¼" | Round Line " " |
| 2 | " | 5/16"x14" | Block Side Steel |
| 2 | " | 2-3/4" | □ Sledge Steel |
| 2 | " | 2" Rd-21½" | Rd-1-13/16" Rd Piston Rod
Steel |
| 1 | " | 11¼" | Round Valve Rod |
| 1 | " | 7/16"x31½" | Locomotive Spring Steel |
| 25 | " | 1"x2" | Dog Hook Steel |
| 1 | " | 5/8" | Oct. 2 bars 3/4" Oct. Cold Chisel |
| 2 | " " | 2" □ 11½" | □ 1-3/8" □ 1¼" □ Track
& Bull Chisel |
| 1 | " | 3" | □ Splitting wedge steel |
| 12 | " " | 1"x3" | Falling & Bucking wedge |

6

Polson Logging Company

12 “ “ 7/8 Rd.-1" Rd-1-1/8" Rd-1-1/4" Rd
Cold Shut

50 “ 3/4" Round

2 “ 1" “ Roller Bearing Steel

250 ft. 1 1/4"x6" Draw Head Steel

bars 20 ft. long cut in two at 12 1/2¢ lb.

8 ft. each 3" □ 4" □ Die Steel (Ann.) 17¢ lb.

F. O. B., Hoquiam, Wash.

Polson Lg. Co. Order #653 as per copy left with
us of this order. [5]

Terms 2% 10 days, 30 days net.

Signed POLSON LOGGING CO.

J. C. SHAW.

(On one side of sheet): This order is taken subject
to delay in delivery caused by strikes, differences
with workmen, serious fires, accidents to machinery,
or other causes unavoidable or beyond our control.

(4158)

[Endorsed]: “Filed in the U. S. District Court,
Western Dist. of Washington, Southern Division.
Jan. 20, 1914. Frank L. Crosby, Clerk. By F. M.
Harshberger, Deputy.” [6]

Answer.

Comes now the defendant and answers the plain-
tiffs' complaint as follows:

I.

Answering the allegations contained in paragraph
I of the complaint, the said defendant has not knowl-
edge or information sufficient to form a belief as to
the truth thereof and therefore denies the same and

each and every one thereof.

II.

Answering paragraph 2 of the complaint, defendant admits the same.

III.

Answering paragraph 3 of the complaint, defendant admits the last five lines of said paragraph, and in answer to the first two lines of said paragraph, defendant says that it has not knowledge or information sufficient to form a belief as to the allegation contained in said two lines and therefore denies the same.

IV.

Answering paragraph 4 of the complaint, defendant denies the same and each and every allegation, matter, statement and thing therein contained.

V.

Answering paragraph 5 of the complaint, defendant denies the same and each and every part thereof, and more particularly denies that there is due and owing from the said defendant to the said plaintiffs, the sum of \$3,895.39 or any sum whatsoever.

As a further and first affirmative defense, defendant alleges: [7]

I.

That it is a corporation organized under the laws of the State of Washington, having its principal place of business in the city of Hoquiam, and engaged in the logging business, with a large number of camps located a considerable distance from the city of Hoquiam, where its office is. That a day or two prior to the 11th day of September, 1912, a sales-

man, representing himself to be the agent of the plaintiffs in this cause, came to the office of the defendant company and then and there solicited one J. C. Shaw, the bookkeeper of the defendant, for an order for steel for defendant's camp; that no order was given to the said salesman, and the salesman then requested of the said Shaw, permission to go to the camps of the said defendant company, and for a pass over the railroad lines of the defendant company, for the purpose of transporting him to camp; that it is one of the rules and regulations of the said defendant company and one of its customs, well known at that time to the said salesman, that no person was permitted to ride on the trains of the said defendant company for any purpose whatsoever, without a pass first had and obtained from the said office, entitling such person to ride on said defendant's trains. That such pass was refused, and that after such refusal, the said salesman, in a manner unknown to the said defendant, and without any permission on its part, went to the main camp of the said defendant company and then and there falsely represented to the superintendent of said camps and to the head machinist in said camp, that he, the said salesman, had been sent to said camp by the office at Hoquiam, Washington, for the purpose of getting the sizes of steel that they used in their railroad work, and for the purpose of finding out what steel, if any, was required; that the said head machinist and the said superintendent, relying upon such [8] false representations, showed the said salesman around the camp and more particu-

larly went through the machine-shop with him and explained to him the sizes of steel used in the camp, and in general gave the said salesman such information with reference to steel and the uses thereof and the requirements of the camp, that the said agent requested and asked for. That the said salesman thereafter and, to wit, on the 11th day of September, 1912, again presented himself at the office of the said defendant and more particularly to the said J. C. Shaw, the bookkeeper, and then and there represented to the said Shaw, that he had been up to the camp of the defendant company, and then and there falsely represented to the said Shaw that the superintendent and machinist of said camp had given him certain sizes of steel which the said camp was in need of, and falsely represented that the steel sold by his firm was manufactured by the said plaintiffs, and then and there requested an order for steel. That thereupon, the said Shaw, the bookkeeper of the said defendant, acting without any authority or knowledge on the part of the said defendant company or its officers, relying upon the false and fraudulent representations so made by the said salesman, and believing the statements so made by the said salesman to be true (whereas in truth and in fact, said statements and representations were false), gave the said salesman an order for an amount of steel materially less than the amount shown on the alleged order sued on, the same to be delivered at Hoquiam, Washington, f. o. b., and then and there, under the circumstances mentioned, signed the name of the defendant company by himself, to an order

for such small amount of steel; that such order, or any order that was obtained on said day from the said Shaw, signing on behalf of the said defendant company, was obtained by the said salesman [9] through the false and fraudulent representations made and through the false and fraudulent conduct of the said salesman as hereinafter explained.

WHEREFORE having fully answered, the said defendant prays that this action may be dismissed and that it may recover its costs and disbursements herein.

BRIDGES & BRUENER,
Attorneys for Defendant.

(Verification.)

(Filed Feb. 27, 1914.) [10]

Reply.

Come now the plaintiffs herein and for reply to answer of the defendants say:

I.

Plaintiffs deny each and every allegation contained in the affirmative defense pleaded by defendants. Wherefore plaintiffs pray for judgment as in their complaint on file herein.

JOHN W. ROBERTS.
NELSON R. ANDERSON.

(Verification.)

(Filed Mar. 16, 1914.) [11]

Verdict.

We, the jury empaneled in the above-entitled cause, find for the plaintiffs and assess their damages at the sum of Thirty-eight Hundred Ninety-five 39/100 Dollars (\$3,895.39/100) at six per cent interest from March six, 1913.

GEO. A. MORRISON,
Foreman.

Filed Sept. 26, 1914. [12]

Judgment.

This matter coming on regularly for trial before the Honorable Edward E. Cushman, one of the Judges of the above-entitled court, on the 24th, 25th and 26th days of September, 1914, plaintiffs being present by their attorneys, John W. Roberts and Nelson R. Anderson, and defendant being present by its attorneys, Bridges & Bruener; a jury having been regularly empaneled and evidence having been propounded by both parties hereto, and a verdict having been rendered by the jury upon said evidence and under the instructions of the Court in the amount of Three Thousand Eight Hundred and Ninety-five and 39/100 (\$3,895.39) Dollars, together with interest thereon at the rate of six per cent per annum from March 6th, 1913, until paid, and the Court being duly advised in the premises, it is

ORDERED, ADJUDGED AND DECREED, that Gustave H. Neumeyer, Abraham J. Dimond, and William E. Neumeyer, copartners, doing busi-

ness under the name and style of Neumeyer & Diamond, plaintiffs, do, have and recover of the Polson Logging Company, a corporation, defendant, the sum of Four Thousand Two Hundred and Sixty-seven and 38/100 (\$4,267.38) Dollars, together with interest thereon at the rate of six per cent per annum from date hereof, until paid and the sum of One Hundred Forty-four and 80/100 (\$144.80) Dollars, costs herein to be taxed by the clerk of the above-entitled court, together with the taxable costs and disbursements as provided by law.

Done in open court this 9th day of October, 1914.

EDWARD E. CUSHMAN,

Judge.

(Filed Oct. 9, 1914.) [13]

Motion for Judgment Notwithstanding the Verdict.

Comes now the defendant and moves the Court for judgment in its favor, notwithstanding the verdict of the jury rendered in the above-entitled cause.

BRIDGES & BRUENER,

Attorneys for Defendant.

(Filed Sept. 30, 1914.) [14]

Order Striking Defendant's Motion (for Judgment Notwithstanding the Verdict).

This matter coming on regularly for hearing before the above-entitled court and the Honorable Edward E. Cushman, one of the Judges thereof, on the 30th day of November, 1914, plaintiffs appearing by their attorneys Nelson R. Anderson, and John

W. Roberts and defendant appearing by its attorneys, Bridges & Bruener, and the Court being duly advised in the premises, it is hereby

ORDERED that said motion for judgment *non obstante veredicto* be, and the same hereby is, stricken.

Done in open court this 4th day of December, 1914.

EDWARD E. CUSHMAN,

Judge.

(Filed Dec. 4, 1914.) [15]

Motion for New Trial.

Comes now the defendant and moves the Court to grant a new trial herein, for the following causes materially affecting the substantial rights of the said defendant, to wit:

I.

Insufficiency of the evidence to justify the verdict and the judgment, to wit:

A. Failure on the part of the plaintiffs to prove that they delivered to the said defendant goods, wares and merchandise of the kind, character and description called for by the contract sued on, and in accordance with said contract.

B. The evidence in the case conclusively shows that the plaintiffs did not deliver or tender delivery to the defendant, goods, wares, and merchandise *or* the kind character and quality and description called for by the contract sued on, and in accordance with said contract.

II.

Error in law occurring at the trial, to wit:

A. Refusal of the Court to grant defendant's motion challenging the sufficiency of plaintiff's evidence, at the close of plaintiff's case, and its motion for a directed verdict at said time.

B. Refusal of the Court, at the close of all the testimony, to grant defendant's motion for a directed verdict.

C. The admission by the Court, over defendant's objection, permitting William Neumeyer, one of the plaintiffs, to testify in rebuttal, what amount and [16] what kinds of steel other logging companies in different parts of the State of Washington, Idaho, and other states, used and were using; what amount and kind of steel other logging companies in said states, purchased from the said plaintiffs; and that the witness knew, by reason of such sales and such purchases, that the order sued on was a small order for a concern like the Polson Logging Company, and that such order would be used up by said company within a year.

D. Refusal of the Court to give defendant's requested instruction No. 3, in its entirety.

E. Refusal of the Court to give defendant's requested instruction No. 4.

F. Refusal of the Court to give defendant's requested instruction No. 5.

G. Refusal of the Court to give defendant's requested instruction No. 6.

BRIDGES & BRUENER,

Attorneys for Defendant.

Order Denying Defendant's Motion for New Trial.

This matter having come on regularly for hearing before the above-entitled court and the Honorable Edward E. Cushman, one of the Judges thereof, on the 30th day of November, 1914, plaintiffs being present by their attorneys, Nelson R. Anderson and John W. Roberts, and defendant being present by its attorneys, Bridges & Breuner, and the Court having heard the argument of counsel and being duly advised in the premises, it is hereby

ORDERED that defendant's motion for a new trial be, and the same is hereby, denied. Defendant excepts and his exception is allowed.

Done in open court this 4th day of December, 1914.

EDWARD E. CUSHMAN,

Judge.

(Filed Dec. 4, 1914.) [18]

Order [Extending Time for Filing Bill of Exceptions].

On motion of defendant in the above-entitled cause, it appearing that there is good cause for such action,

IT IS ORDERED that said defendant have until December 20th, 1914, within which to draw up, serve and file its Bill of Exceptions in said cause.

Done in term time this 23d day of November, 1914.

EDWARD E. CUSHMAN,

Judge.

(Filed Nov. 24, 1914.) [19]

Notice of Filing of Bill of Exceptions.

To John W. Roberts and Nelson R. Anderson, Attorneys of Record for Neumeyer & Dimond, Plaintiffs:

You and each of you will please take notice that the defendant in the above action has filed with the clerk of the above court its Bill of Exceptions to the rulings of the Court in the trial of the above cause, and now serves a copy of the same upon you.

And you are further notified that said defendant will present said Bill of Exceptions to the Honorable E. E. Cushman, at the courtroom of said court, in the city of Tacoma, Pierce County, Washington, on Saturday, the 19th day of December, A. D. 1914 at the hour of 10 o'clock A. M. of said day, or as soon thereafter as counsel can be heard, and will ask the Judge of said court to settle and sign said Bill of Exceptions.

A copy of an order made on the 24th day of November, 1914, by the Honorable E. E. Cushman, Judge of said court, giving the said defendant until the 20th day of December, 1914, within which to draw up, serve and file its proposed Bill of Exceptions in said cause, is herewith also served upon you.

BRIDGES & BRUENER,

Attorneys for Defendant.

We hereby acknowledge service of the above Notice, copy of Order and said Bill of Exceptions, after

filing, at Seattle, Washington, this 8 day of December A. D. 1914.

JOHN W. ROBERTS,
NELSON R. ANDERSON,
Attorneys for Plaintiffs. [20]

Statement of Fact.

BE IT REMEMBERED that heretofore and upon, to wit, the 24th day of September, A. D. 1914, this cause came on regularly for hearing before the Hon. E. E. Cushman, Judge of the above-entitled court, and a jury;

The plaintiffs being represented by their attorneys and counsel, John W. Roberts, Esq., and Nelson R. Anderson, Esq.; and

The defendant being represented by its attorneys and counsel Messrs. Bridges & Bruener.

Whereupon the following proceedings were had and done, to wit: [21]

The plaintiffs herein, to maintain the issues on their part, introduced the following evidence:

(Opening statement of court and jury by Mr. Roberts:)

[Testimony of M. S. Sulcove, for Plaintiffs.]

M. S. SULCOVE, a witness produced on behalf of the plaintiffs herein, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROBERTS.)

Witness testified that he was a salesman in the employ of Neumeyer & Dimond, and had been in

(Testimony of N. S. Sulcove.)

their employ for a period of ten years, and covered part of the southwest of the Pacific Coast and part of the middle northwest; that he first called on the Polson Logging Company in September, 1910, and saw Mr. Shaw, the purchasing agent; that Mr. Shaw was not in the market for steel at that time, and witness saw him again in 1911, at the same place, and Shaw again said that his company was not in the market for any steel, saying that his concern has just received a carload thereof. Witness went back in 1912 and saw Mr. Shaw again at the same place, and the latter told the witness that he was not in the market for any steel; that witness requested permission to go to the camps of the Polson Logging Company and Mr. Shaw told witness how to get there, and said: "You will see Mr. Brown or Mr. Kline there," and witness said that Shaw took the back of witness' card and wrote the names of Brown and Kline on this card. Witness said he was going to camp the next morning, and Shaw promised to telephone that evening to Brown and Kline, telling them that witness was coming to camp. The next day there being an election, witness did not go up to camp, but went the following day, getting into camp by means of the logging railroad of the defendant, and succeeded in passing the conductor of the train by means of the card which Shaw had given him. At camp witness saw Mr. Brown and Mr. Kline, and witness said that he [22] went over all of the requirements, sizes and everything, with these two gentlemen, who are the head machinist

(Testimony of N. S. Sulcove.)

and the superintendent of the camps, respectively; witness took down all the specifications on a slip of paper. Witness got back to town that afternoon, saw Mr. Shaw at the office, showed him the list which he had gotten in camp, and Shaw told him to come back in the morning. He went back in the morning and Shaw gave witness the defendant's next order number and signed the order sued on. Plaintiff's Exhibit No. 1 was then shown witness, properly identified, and introduced in evidence as Plaintiff's Exhibit No. 1. Witness identified the signature of Mr. Shaw to this order; that the order was the original order and that no change had been made in the order from the time it was written and signed up to the time of the trial. Witness testified that he had never seen the steel and did not attend to the shipping; that a copy of the order was left with Mr. Shaw at the time; that witness saw Mr. Shaw and the Polsons a year later and after the trouble had arisen over *of* the order, and tried to straighten out the difference, but was unsuccessful.

Cross-examination.

(By Mr. BRUENER.)

Witness testified that he had nothing to do with the manufacturing or shipping of any orders in any way whatsoever; that Mr. Shaw gave him authority to go to camp, but did not give him a pass on the railroad; that he told Mr. Brown, the head machinist, and Mr. Kline, the superintendent, that he had been sent up to the camp by the office for the purpose

(Testimony of N. S. Sulcove.)

of finding out what the camp wanted, what they used and what they needed.

“Q. Now, the information with reference to the number of bars that appear on that order, and with reference to the sizes that appear on that order, and with reference to the lengths of the bars which appear on that order, and with reference to all of the specifications on that order, you got at camp?

A. Yes, sir. [23]

Q. Now, Mr. Shaw did not give you any of these specifications? A. No, sir.

Q. In other words, Mr. Shaw gave you that order, and the specifications on that order were all obtained at the camp? A. Yes, sir.

Q. Say, for example, this item: Seven bars of Choker Hook Steel? A. Yes, sir.

Q. And the number of bars wanted?

A. Yes, sir.

Q. And the sizes wanted? A. Yes, sir.

Q. Those were given to you in camp?

A. Yes, sir.

Q. Twenty-five bars of 1x2 Dog-Hook Steel?

A. Yes, sir.

Q. That was given to you? A. Yes, sir.

Q. All of those bars were to be twenty feet long, cut in two? A. Yes, sir.

Q. And you got your specifications with reference to the length from Mr. Kline and Mr. Brown?

A. Yes, sir.

Q. The last two items on the order were to be eight feet each? A. Yes, sir.”

(Testimony of N. S. Sulcove.)

That witness traveled over the camp and came into the machine-shop and the other shops at the camp, with a pad and pencil, and took down all of the sizes and specifications that were given him by Brown and Kline.

“Q. Now, did they specify also the different kinds of steel wanted, so many bars of Swivel Steel, Choker, Clevis, Swivel [24] Eye, Choker Hook, and Piston Rod Steel?

A. Yes I marked it exactly as they gave it to me.

Q. In fact, they specified feet, description, number of sizes, length of bars, and the kind, whether Piston Rod or Draw Head Steel, that they wanted and that they said that the camp needed?

A. Yes, sir.”

That the order was obtained by him in absolute good faith, in the regular way, and that Mr. Shaw was given a copy at the time.

A copy of an order-book such as witness used in taking this particular order was identified as Defendant's Identification “A.”

[Testimony of William E. Neumeyer, for Plaintiffs.]

WILLIAM E. NEUMEYER, a witness produced on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. ROBERTS.)

Witness' name is William E. Neumeyer; residence, New York City; business, the steel business. That the firm of Neumeyer & Dimond is a copartnership

(Testimony of William E. Neumeyer.)

authorized to do business in the State of New York as a copartnership, and that this concern has been in the steel business for generations; that one year after the order was obtained he went to Hoquiam and called upon the Polson Logging Company for the purpose of adjusting the difference with reference to the order; that he then and there had a talk with Mr. Shaw with reference to the order; he said that he could not do much personally, but would have to talk it over with Mr. Robert Polson; Mr. Robert Polson told him the same thing; Mr. Alexander Polson was out of town and could not be seen that trip. Later and on a subsequent trip, he saw Mr. Alexander Polson and tried to adjust the matter with him and Mr. Alexander Polson told him that the order was not gotten in good faith and no adjustment was reached. [25]

Q. Did you see this steel when you were down there?

A. Yes, I went to the freight depot and talked to the freight agent, and saw the bill of lading, and I saw the steel.

Q. And that steel was shipped in accordance with this order in court? A. Exactly.

Mr. BRUENER.—I object to that as not being the best evidence. Objection overruled. Exception allowed.

Q. Now, Mr. Neumeyer, you have made the computations, have you not, and you know what that amounts to in accordance with the prices which are named on the order (counsel handing paper to wit-

(Testimony of William E. Neumeyer.)
ness). Give the jury the exact amount.

A. The exact amount of the bill is three thousand eight hundred ninety-five dollars and thirty-nine cents.

Q. Now, I will ask you to state, Mr. Neumeyer, whether or not the price of that steel is named on that order, whether that was the correct price for the steel.

A. Exactly the price for the steel by the pound, twelve and one-half cents, that is the exact price.

Q. I notice there is one bar, or one piece—(Interrupted.)

A. There is one item, eight feet each three-quarter inch square die steel, a special steel, which has to be annealed, which is a little higher in price, seventeen cents per pound.

Q. Now, you are engaged in selling your steel generally on the Pacific Coast.

A. We are selling our steel all over the United States.

Q. Well, I know, but as a part of the United States, you are selling on the Pacific Coast.

A. Yes, sir. [26]

Q. What is the extent of your business on the Pacific Coast?

Mr. BRÜENER.—I object to that as being immaterial. Objection overruled. Exception allowed.

A. Do you mean what products? What steel on the coast?

Q. Each year, yes, sir.

A. We come out here every year, about August,

(Testimony of William E. Neumeyer.)

September, and October, and we sell on the average of about one hundred twenty-five thousand dollars worth of steel.

Cross-examination.

(By Mr. BRUENER.)

Q. Now, the only time you saw that steel was at Hoquiam, Mr. Neumeyer.

A. At Hoquiam, when I wanted to be sure that the steel was there, and besides I wanted to talk to the freight agent—(Interrupted.)

Q. Just answer the question. The only time you saw the steel was in the warehouse and freight depot combined at Hoquiam? A. Yes, sir.

Q. It was there in the corner of the warehouse all piled up? A. Yes, sir.

Q. You did not make any examination of the steel in any way, just looked at it and saw it was still there, and Neumeyer and Dimond steel, and that is all you concerned your self about? A. Yes, sir.

Q. Now, where was that steel shipped from, do you know, Mr. Neumeyer?

A. From Tacony, Pennsylvania, near Philadelphia.

Q. That steel was shipped by Henry Ditson & Sons. A. Yes, sir.

Q. It was shipped to the Seattle Storage & Warehouse Company, or some such company?

A. That is what I do not remember. I am most of the time away from New York, and I do not know whether it was shipped direct [27] to the Polson Logging Company or not.

(Testimony of William E. Neumeyer.)

Q. You do not know whether it was shipped direct to Seattle and then to the Polson Logging Company.

A. I do not know. Sometimes we ship orders to Seattle to the Seattle Storage and Warehouse Company. In order to save the freight, we make up a carload for different orders and have it reshipped from the Seattle Transfer Company.

Q. Your name is Wm. E. Neumeyer?

A. Yes, sir.

Q. Are you a member of the firm of Gustav H. Neumeyer & Abraham J. Dimond?

A. Yes, since 1913, I am a member of that firm.

Q. You were not a member of the firm when this order was given? A. Not yet.

Q. Were you connected with the business at that time?

A. No, sir, I was traveling, just the same as Mr. Sulcove was.

Q. You traveled in the capacity of a salesman?

A. Yes, sir.

Q. And you continued to travel in the capacity of salesman until January 1st, 1913? Is that correct?

A. I became a partner in the firm, but I am still traveling for the firm, just the same as I did before.

Q. So, you have nothing to do with the business end of it? A. Not much.

Q. And your orders are sent in just the same as everybody else's orders are sent in? A. Yes, sir.

Q. And you have nothing to do with the filling or shipping of orders? A. No, sir. [28]

Witness further testified that the shipper of this

(Testimony of William E. Neumeyer.)

steel was Neumeyer & Dimond, but that Henry Diston & Company do the manufacturing; that the steel that is shipped by Neumeyer & Dimond is manufactured under the specifications prepared and furnished by Neumeyer & Dimond, and that Henry Diston & Co. cannot manufacture this steel for anybody else.

Q. When did this order first come to your attention, Mr. Neumeyer?

A. The order of the Polson Logging Company?

Q. Yes, this particular order.

A. That order first came to my attention in Portland when Mr. Sulcove came back to Portland in the year 1912, because I am out here with four or five boys, and I am kind of managing this trip, and we come in and talked conditions over, and I mailed these orders in to New York, and I saw that order the following Saturday after it was taken.

Q. When was the order next brought to your attention?

A. Not any more after I sent that order off to the main office in New York City.

Q. You had nothing more to do with the order, or the filling or the shipment of the order at all?

A. Nothing whatsoever.

Q. Then, the order was again sent to you, or you got it from the New York office in some way,—or did you have the order at all?

A. The second time I heard about this order was about around in January or February, while I was in New Orleans, that some steel had arrived at Ho-

(Testimony of William E. Neumeyer.)

quiam, and Mr. Polson said he did not order the steel, and the house wired it to me in New Orleans, and asked if I knew of any details of that order— (Interrupted.) [29]

Q. I am not anxious about that. The next time you had any active connection with the order was when you took it to Hoquiam and had these various talks with Mr. Shaw and Mr. Polson?

A. It was mentioned when I came back from a trip.

Q. But I say the only active thing you had to do with it was when you took the order and went to that office a year later. A. Yes, sir.

Redirect Examination.

(By Mr. ROBERTS.)

Plaintiff's Exhibits No. 2, 3, 4, 5, 6, 7, and 8 were admitted in evidence without objection from the defendant.

It was also admitted by the opposing attorneys that the steel arrived at Hoquiam about the middle of March 1912.

(Witness excused.)

Thereupon counsel for defendant, upon the demand of plaintiff's counsel, produced a number of copy books of the defendant company, which copy books were the letter or press files of orders sent out by the Polson Logging Co. Counsel for plaintiffs read from these copy books numerous letters in which the Polson Logging Co. ordered numerous and different articles for use in their business, all of said

copies showing the following signature: "J. C. Shaw, Buyer."

[Testimony of J. C. Shaw, for Plaintiffs.]

J. C. SHAW, being duly sworn, was called by the plaintiffs, testified as follows:

(By Mr. ANDERSON.)

Admitted that he had signed his name as J. C. Shaw, Buyer, [30] to the letters which counsel for plaintiffs had read to the jury. Witness was then shown other order books for the years 1911, 1912, and 1913, and witness admitted that he had sent out almost ninety-five per cent of these different orders, but it was not customary to sign any name to the orders and that anyone in the office would make out such orders if Mr. Shaw was away, or if directed to do so by either Mr. Alexander Polson or Robert Polson.

On redirect examination Plaintiff's Exhibit 9 was introduced without objection.

Thereupon the plaintiffs rested their case and counsel for defendant made the following motion: [31]

Mr. BRUENER.—If the Court please, I desire to challenge the sufficiency of the evidence of the plaintiffs upon the ground, upon the particular ground that there is not sufficient evidence before the Court. assuming that the order sued on was *bona fide* in every respect; and that it was given by Mr. Shaw, and that he gave it with authority, or, at least, apparent authority, to establish that the goods shown on that order were shipped in accordance with the order. That of course, is a prerequisite, and a part

(Testimony of J. C. Shaw.)

of plaintiffs' case, but I do not believe that the testimony of Mr. Neumeyer is sufficient upon that score. There is testimony, of course, that a car of steel,—that there is some steel in the warehouse at Hoquiam, but there is no direct, positive testimony that it complied with the order as given.

The COURT.—Motion denied. Exception allowed.

WHEREUPON, the defendant herein, to further maintain the issues on its behalf, introduced the following evidence:

(Opening statement to Court and jury by Mr. Bruener.) [32]

[Testimony of Thomas D. Sharp, for Defendant.]

THOMAS D. SHARP, a witness produced on behalf of the defendant herein, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. BRUENER.)

Q. What is your name?

A. Thomas D. Sharp.

Q. You live in Hoquiam—this State?

A. Yes, sir.

Q. And your business is what?

A. Railroad agent.

Q. For what company? A. Northern Pacific.

Q. How long have you been agent for the Northern Pacific Railway Company at Hoquiam?

A. Three years last August.

Q. Do you remember a shipment of steel consigned

(Testimony of Thomas D. Sharp.)

to the Polson Logging Company, arriving in Hoquiam some time in the early spring in 1913?

A. I do.

Q. Do you know exactly when that steel arrived?

A. Yes, sir. (Examining paper.) March 11, 1913.

Q. Now, that shipment was refused by the Polson Logging Company, was it? A. Yes, sir.

Q. Where has that steel been since that time?

A. In our warehouse at Hoquiam, or the Northern Pacific Railway Company's warehouse at Hoquiam.

Q. Where has it been piled in your warehouse?

A. In one end of the warehouse by itself. [33]

Q. Is that steel now in the same condition as it was when it was unloaded from the car? A. Yes, sir.

Q. In other words, whatever came out of the car is still in your warehouse?

A. Yes, the same steel is there in the warehouse that came out of the car.

Q. Have you the original way bill or freight bill showing from where that steel was shipped, and what was shipped?

A. Yes, it was shipped from Seattle.

Q. This is the original freight bill. (Handing paper to witness.) A. Yes, sir.

Q. And it is a part of the records of your office, Mr. Sharp? A. Yes, sir.

Mr. BRUENER.—I desire to offer this freight bill in evidence, if the Court please, as Defendant's Exhibit No. A.

No objection.

(Testimony of Thomas D. Sharp.)

(Whereupon said freight bill is admitted in evidence and marked Defendant's Exhibit "A," of this date.)

Q. Now, you would like to retain this original?

A. It is not absolutely necessary. I presume I can collect the charges on a copy.

By the COURT.—If you desire after the trial, a copy may be substituted.

Mr. BRUENER.—If you can make a copy at the noon hour, and give it to me, and compare it, then I will substitute that for the original.

Mr. ROBERTS.—That is satisfactory. [34]

By the WITNESS.—It has some of my notations on it as to when the shipper and the consignee were notified, so I would like to have it.

Mr. ROBERTS.—I do not think there is any question but what you have the steel. What is the storage against it? A. Forty cents per day.

Mr. BRUENER.—The railroad company is getting rich on this.

WITNESS.—We are afraid it will be left a little too long.

Witness excused. [35]

[Testimony of George J. Flurshutz, for Defendant.]

GEORGE J. FLURSHUTZ, a witness produced on behalf of the defendant herein, being first duly sworn, testified as follows;

Direct Examination.

(By Mr. BRUENER.)

Q. What is your name?

(Testimony of George J. Flurshutz.)

A. George J. Flurshutz.

Q. Do you live in Hoquiam? A. I do.

Q. By whom are you employed?

A. F. G. Foster Company.

Q. What is their business?

A. Well, wholesale hardware and grocery concern.

Q. What part of that business have you charge of?

A. The hardware.

Q. What experience have you had in the hardware business? A. Oh, I should judge sixteen years.

Q. As to a part of the hardware business, or as a part of your experience, have you had to deal with different sizes and kinds of steel and iron?

A. Yes, sir.

Q. As a part of your duties as manager of that department of the Foster Company, do you handle different kinds and sizes of steel and iron and other hardware? A. Yes, sir.

Q. Now, I will ask you to state whether or not you ever examined Neumeyer and Dimond steel, so called, in the freight house or warehouse of the Northern Pacific Railway Company in the City of Hoquiam, Washington. A. I did.

Q. When did you do that? [36]

A. Why, I have really forgotten the exact date.

Q. I do not want the exact date, but was it within the last two weeks? A. Oh, yes.

Q. Now, where was that steel?

A. It was in the freight-sheds, that is the warehouse of the depot, over at Hoquiam.

(Testimony of George J. Flurshutz.)

Q. Was it in a corner by itself, or with other material?

A. Yes, it was piled up in the end all by itself.

Q. Did you go over that steel to ascertain the number of bars that were in that shipment, and the length of the bars? A. I did.

Q. How did you go about it?

A. Why, I got a number of fellows to go down there and handle the steel, and we got some scales and the pile being over here (indicating), we put the scales here (indicating), and we took one bar and put it on the scale and measured it for size, that is the different diameters, whether it was one and one-eighth inch shaft, for instance, or whatever it measured, and then it was piled over on the floor.

Q. As you took bar by bar and weighed it, did you take down the length of the bar as well as the weight?

A. Yes, we took the size of the bar, that is, if it was inch and one-*eight* around, in diameter, or whatever it was, we took the lengths of that bar, and the weight of that bar.

Q. Of course, that steel was all jumbled together, wasn't it? A. Yes, sir. [37]

Q. That is, you could not get the bars that belonged to one particular shipment together?

A. No, sir; not without spreading it all around.

Q. But you took bar by bar, just as it came?

A. Yes, that is the first time I measured.

Q. Now, the weight that you found of the bars that are actually there, how do they compare with the

(Testimony of George J. Flurshutz.)

weights as shown on the bill, or invoice of Neumeyer and Dimond, which you see now.

Mr. ROBERTS.—If the Court please, I object to this. I do not know exactly what the purpose of this question is, but I want to call your attention to the fact that this shipment of steel was rejected before it was there. It was rejected by them before it arrived at Hoquiam, and rejected for the reason, and upon the ground that they had never ordered the steel; that no such order had ever been given. They had stood upon that ground, claiming that the order had never been given, either this or any other order, denying that our agent had ever even been there. Now, they have never at any time, either before the action, or now that the action has been instituted, made the claim that we did not furnish the steel in accordance with the order. That is a defense that would have to be pleaded, and it has not been pleaded, and in fact they are depending here upon a defense that is entirely inconsistent with any such a theory.

By the COURT.—I understand that they denied paragraph four of the complaint.

Mr. ROBERTS.—Probably they have, but the point is, your Honor, [38] that they cannot be allowed to make this inconsistent defense. In other words, they cannot defend here upon the ground that they did not order this steel, and then turn around and say that the order,—that they did order it, but it is not right, any more than I can plead that I never executed a promissory note, but if I did execute it,

(Testimony of George J. Flurshutz.)

I still have a certain defense. I do not know what the witness is going to testify to, but I assume it is for that purpose, but if that is true, then, their remedy would be one of two things, to either compel us to furnish—us to furnish the steel in accordance with the order, or recoup in damages. Furthermore this witness, by what authority I do not know, because Mr. Polson has constantly, under one phase of his denials, refused to have anything to do with the steel, and now he seems to have sent this man in there to take possession of it, for the purpose of counting and checking it up, but more than two years subsequent to the shipment of the order, or eighteen months after it arrived in Hoquiam. Now, it won't do to say eighteen months after the arrival of the steel; "I went in there and measured up certain steel that I found lying around the warehouse, and there is so much of it."

By the COURT.—It is a matter of explanation and argument whether it is all there or not. The Court allowed you to show by two witnesses, Mr. Neumeyer and Mr. Sulcove, that this contract had been performed. You are suing for the performance of the contract, and Mr. Sulcove admitted he was not around there and had not seen it since it was delivered, and Mr. Neumeyer stated it had [39] been delivered, and you, having been allowed to show that, I will permit this evidence to be introduced subject to any argument or whatever you can show that there may be less now or less when this examination was made, than when you delivered it.

(Testimony of George J. Flurshutz.)

Mr. ROBERTS.—Of course, counsel may have some other motive but if it is sought to be introduced here as a defense, or a partial defense, it would only be partial to such an extent as they could show it was not there, then I say that it is a defense that has to be pleaded; that it has not been pleaded, and a defense that has never been made.

Objection overruled. Exception allowed.

(Mr. BRUENER.)

Q. Answer the question.

A. The weights are if anything according to the scales I weighed them on, a little better than the invoice calls for in most instances.

Mr. ROBERTS.—A good deal of fuss for nothing.

A. Yes, sir.

Mr. BRUENER.—I was trying to show that the weights were all right, that is, with reference to the bārs actually found there.

WITNESS.—But in checking the invoice, there is a shortage of two— (Interrupted.)

Mr. ROBERTS.—Just a moment.

Q. I will show you this book, Mr. Flurshutz, and ask you to state whether or not as you took each bar and measured it and weighed it, you put down the bar—the number and size of it, and the kind of steel and the length [40] of it?

A. I did not put down the kind of steel, because I did not know there were different kinds of steel.

Q. Well, I mean the sizes.

A. The sizes, yes, sir. For instance, I checked off the bill, a bar of steel as I supposed, whatever it was,

(Testimony of George J. Flurshutz.)

either iron or steel, and put it from the pile on to the scales, and measured it as to the size, first, three by three, then took the length, eight feet three inches, then the weight, two hundred sixty pounds.

Q. You did that with every bar?

A. With every bar that came along.

Q. Of the entire amount of steel that was there present? A. Yes, sir.

Q. I would like to have this book marked as identification "B." Now, I will ask you to state whether or not from that original book you made a segregation of the different sizes that you found there, and after making that segregation put the number of bars and the different sizes together. A. Yes, sir.

Q. That would enable you to tell what?

A. That would enable me to tell what was there.

Q. That would enable you to tell the number of bars of any particular size of steel? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. And did you also put opposite the length of each bar, of each particular bar, of each particular kind? [41] A. Yes, sir.

Q. I show you this paper and ask you whether or not it is the segregation made from this original book?

Mr. ROBERTS.—I object to that as incompetent, irrelevant and immaterial. If this is an effort to show that some of the lengths are not there, then I wish the objection to be made upon all of the grounds that I made to the other question, and especially upon the ground that it would not be fair, as I view

(Testimony of George J. Flurshutz.)

it, to allow him to go to a pile of rejected steel, that has been lying there eighteen months, and measure it eighteen months afterwards, and then bring in the evidence of what he found there eighteen months later; that this evidence must be confined to the time of the delivery.

By the COURT.—It is a matter going more to the weight of the evidence,—I understand you are not objecting to the evidence being offered in this form?

Mr. ROBERTS.—No, sir; I do not want to be technical about that at all.

Objection overruled.

Mr. BRUENER.—I would like to have this list marked as defendant's identification number "C."

Q. The lengths given in that segregation and book are correct? A. Correct as I found them.

Q. And the number of bars and the sizes in that book and that list is correct as you found it?

A. Yes, sir.

Mr. BRUENER.—I will offer in evidence defendant's identification "B." [42]

Mr. ROBERTS.—The same objection, if the Court please.

By the COURT.—There is no objection as to the form?

Mr. ROBERTS.—No, sir; I do not object on the ground that it has not been properly presented, I mean as to what he put down here, or anything like that, but I object to it for any purpose in the case. Assuming that it has been properly made, I still object to it.

(Testimony of George J. Flurshutz.)

By the COURT.—The objection will be overruled. Gentlemen of the jury, you understand no added weight is to be given the witness' testimony merely because he wrote this down. It is simply admitted in this way, so it will be tabulated, so you can see what he is intending to testify to.

(Whereupon said document is admitted in evidence and marked Defendant's Exhibit "B" of this date.)

Mr. BRUENER.—I will now offer in evidence defendant's identification "C." It is a segregation of this original book. The other book would be unintelligible to the jury, that is his original record.

Mr. ROBERTS.—I do not raise any point about this paper not being the original, particularly after the explanation that the Court has just made, and I accept that tabulation, in so far as it is a tabulation, and I make no point of it not being an original.

By the COURT.—Do you still insist upon the retention of the book under that concession?

Mr. BRUENER.—I think not, your Honor.

By the COURT.—Very well, it may be withdrawn, and exhibit "C" will be admitted.

(Exhibit "B" withdrawn.) [43]

(Whereupon defendant's identification number "C" is admitted in evidence and marked Defendant's Exhibit "C" of this date.)

Mr. BRUENER.—As I understand it, Mr. Roberts, you do not dispute the correctness of this tabulation from the original book?

Mr. ROBERTS.—I do not admit the correctness of

(Testimony of George J. Flurshutz.)

this, but I will admit it is just as correct as the book is, and proves everything that the book could prove.

Q. Did you, after the first measurement, did you again count the number of bars, and measure the length of the different bars? A. Yes, sir.

Q. How many days after the first measurement did you do that?

A. That was probably two or three days afterwards.

Q. With whom did you make that?

A. I believe the gentleman's name is Mills.

Q. And he is connected with what concern?

A. I understood he was connected with Hunt & Mottet Company.

Q. A hardware concern in Tacoma?

A. Yes, sir.

Q. What did you and he do with that steel?

A. This time we segregated it, put the different sizes of bars together, that is of the one-inch and all of the three-quarter inch all together in a pile, and then we measured them.

Q. How did you measure them?

A. A steel tape for the length and also a calliper for [44] size.

Q. What do you mean by calliper?

A. A calliper rule is a little sliding affair and you pull out this little slide and clamp it onto the bar of steel, and then you pull it off and it shows the size in inches.

Q. Is that what you use in your business for getting the size of such material as that?

(Testimony of George J. Flurshutz.)

A. Yes, sir.

Q. And as you measured each bar, did you make a notation at the time of the length and the size of each bar? A. Yes, sir.

Q. And what did you make that notation on?

A. In a large sort of a book that was furnished us.

Q. And you put the notations in in your own handwriting, did you? A. At the time, yes, sir.

Q. And as each bar was measured?

A. Yes, sir.

Q. I will show you this book (handing the book to witness), and ask you to state whether or not it contains the measurement of the different sizes of that steel. A. Yes, sir.

Q. Is that correct as you found it there?

A. Absolutely, yes, sir.

Q. How do the lengths for example compare with the measurements that you first made alone?

A. Very, very close.

Q. What would make the difference?

A. Well, for instance, in shearing off of this steel, it [45] is not cut exactly square, it is sheared off and sometimes—well it is pretty hard to tell it; it is not cut off straight, but it is cut kind of slanting, and the first time I measured it on the short side, and then measured it again, and the bar happened to be turned over on the other side, it varied from one-half to three-quarters of an inch, and that was about the variance between this tabulation and the other one.

(Testimony of George J. Flurshutz.)

Q. Now, the two you found to be substantially correct?

A. Oh, yes. I would say that it was correct.

Mr. BRUENER.—I will offer this book in evidence.

Mr. ROBERTS.—Is that not all carried on that paper? (Indicating paper.)

Mr. BRUENER.—This is not; this is the tabulation made from the original, and they went over it again, and this is the second tabulation.

WITNESS.—I made the first tabulation alone.

Mr. ROBERTS.—I understand that the two are substantially the same. A. Yes, sir.

Mr. ROBERTS.—I do not make any point except that I do not want to put all of these books in. If it is substantially the same, I do not see the necessity of putting it in.

By the COURT.—Are you going to introduce it so as to use Mr. Mills later?

Mr. BRUENER.—Yes.

By the COURT.—I do not understand that there is any objection that the Court can rule on.

Mr. ROBERTS.—Probably not, except that I was trying to [46] keep from encumbering the record, because I understood it was all on this paper (indicating); of course, I make the general objection that I have been making to all of this class of testimony, but I do not object to its form.

By the COURT.—The same ruling.

Exception allowed.

(Whereupon said book is admitted in evidence and marked Defendant's Exhibit "D" of this date.)

(Testimony of George J. Flurshutz.)

Q. Can you tell without referring to the book how many bars of one and one-quarter by four and one-half inch choker hook steel was in the shipment?

A. What size?

Q. One and one-quarter by four and one-half inch choker hook steel? A. Two.

Q. Two bars of choker hook steel.

A. Yes, sir.

Q. That is, all of those bars that you found there was cut in two?

A. I could not say they were cut in two.

Q. A lot had been cut in two; that would account for the short lengths; that is, they were not twenty-foot long? A. No, sir.

Mr. ROBERTS.—The order says, “were cut in two.”

Mr. BRUENER.—Well, one bar twenty foot long cut in two would make two bars.

Q. Your total weight from this tabulation for those two bars is four hundred and ninety-three pounds. [47]

A. Yes, sir.

Q. Did you find any bar or bars of steel there that did not appear on the order at all?

A. Well, in checking over the invoice, I did, yes, sir.

Mr. ROBERTS.—If the Court please I object to that. The question was whether or not he found any bars there that were not on the order.

Mr. BRUENER.—On the invoice?

A. Yes, I did.

(Testimony of George J. Flurshutz.)

Mr. ROBERTS.—Now, let us see.

Mr. BRUENER.—I will introduce the invoice and show it is exactly with the order.

Mr. ROBERTS.—Exactly with our order?

Mr. BRUENER.—No, sir, I will introduce the invoice we got from Neumeyer and Dimond showing exactly what they claim was shipped.

Mr. ROBERTS.—Is that what you claim that he had?

Mr. BRUENER.—Yes, sir.

Mr. ROBERTS.—Let the record show that this witness claims to have the invoice that came from Neumeyer & Dimond.

Mr. BRUENER.—I do not know as he had the invoice that came from Neumeyer & Dimond.

WITNESS.—I had a copy of the invoice.

Q. Just referring to this last page (indicating). Was there any bar of steel there that you did not—that did not appear on your invoice?

A. Yes, one bar of one and seven-eighths octagon tool steel shows in this pile of steel that it does not show on the invoice.

Mr. ROBERTS.—That is to say, you found a bar there that is [48] not on the invoice?

A. Yes, a bar of inch and seven-eighths octagon tool steel was in this pile of steel that does not appear on the Neumeyer and Dimond invoice.

Mr. ROBERTS.—In other words, that bar was there, but not on any written evidence that you had at all. A. Yes, sir.

(Testimony of George J. Flurshutz.)

(Mr. BRUENER.)

Q. Is that the invoice you had with you (indicating). A. Yes, sir.

Mr. BRUENER.—I would like to introduce the copy of this invoice in evidence.

Mr. ROBERTS.—I would like to have the original.

Mr. BRUENER.—This is the copy the witness used, and it is a correct copy of the original. The original will be introduced later.

Mr. ROBERTS.—You say it is a correct copy?

Mr. BRUENER.—Yes, sir.

Mr. ROBERTS.—All right. But the original will be introduced in evidence later?

Mr. BRUENER.—Yes, sir.

(Whereupon said paper was admitted in evidence and marked Defendant's Exhibit "E" of this date.)

Mr. BRUENER.—I would like to offer in evidence the original invoice sent by Neumeyer & Dimond to the Polson Logging Company, while we are on this subject.

Mr. ROBERTS.—All right.

By the COURT.—It may be admitted.

(Whereupon said invoice was admitted in evidence and marked Defendant's Exhibit "F" of this date.)

[49]

Q. Now, do you remember of any other shortage—
(Interrupted.)

Mr. ROBERTS.—That was not a shortage; that was an over; that was more than was on the order.

Q. Did you find any other shortage other than the

(Testimony of George J. Flurshutz.)

choker hook steel? A. Well, there was one—

Mr. ROBERTS.—Counsel is in error unintentionally. The witness has not testified to any shortage.

By the COURT.—He testified to two bars, but whether or not it is a shortage is a matter of argument. You can call his attention to what he found of a certain class and then determine whether or not it was a shortage.

A. The invoice called for seven bars.

Mr. ANDERSON.—How many bars were there there?

A. Two.

Mr. BRUENER.—The invoice calls for seven bars and there are two bars there.

Q. What did you find with reference to any other size?

A. As I remember, it was the one-inch. There is one bar of one inch, but I do not remember whether it was the piston rod steel or— (Interrupted.)

Q. Does not your book show that?

A. Yes. There is so many kinds of steel there it is hard to remember them.

Q. Did you count the number of bars that you— after you had made this tabulation with Mr. Mills, do you know how many bars of steel all told were there?

A. Well, I could not say that I remember. I think the invoice as tabulated called for three hundred and [50] ninety-one bars, if I am not mistaken—let me see—I would rather not rely upon my memory. If I remember right, I found three hundred and

(Testimony of George J. Flurshutz.)

seventy-eight bars, and there is three hundred and ninety-one bars on the invoice.

Mr. ROBERTS.—Take the book and get that right.

A. (Examining book.) I was right; three hundred seventy-eight I found, and there are three hundred and ninety-one called for on the invoice.

Cross-examination.

(By Mr. ROBERTS.)

Q. What is the total weight?

A. I did not tabulate the total weight.

Q. Well, I do not know how we can get after this until we know about that. You have the weight here. (indicating paper)?

A. The weights are there, that is the total weight of the number of bars of the different kinds is here. Now, for instance— (Interrupted.)

Q. Well, as I understand it, your tabulation, you have carried out here in a column to the right, the weight of the various kinds. You simply have not computed the total?

A. Yes, I have not computed the total of the whole shipment.

Q. That is what I mean.

A. No, sir, I have not done that.

Q. How long will it take you to do that?

A. Not so very long. There is quite a few items there.

Q. Maybe that can be arranged after you leave the witness-stand. [51] Now, you say that where you weighed this, you found that it is a little better than

(Testimony of George J. Flurshutz.)

the requirements? A. Yes, sir.

Q. So the weights were good honest weights?

A. Good honest weights, yes, sir.

Q. Now, at whose instance or request did you do this? A. Why— (Interrupted.)

Q. The Polson Logging Company?

A. No, sir, Mr. Foster asked me to do it.

Q. Mr. Foster is your employer? A. Yes, sir.

Q. You knew and you understood that you were doing it for the Polson Logging Company?

A. Yes, exactly, that is the way I understood it.

Q. That is what I mean. Now, what sort of a place was it where you found this steel?

A. Right in the general freight-shed, where all of the freight is handled.

Q. Do you call it a freight-shed? It is separate from the depot, is it?

A. I guess you would call it part of the depot. It is the freight depot. The freight part is over here (indicating) and the passenger part is over there (indicating).

Q. That is what I mean, the two are not together?

A. That is right.

Q. The freight department is open every day in the year? A. Yes, except Sundays.

Q. Sometimes it is open on Sunday?

A. Not as I know of.

Q. Now, you say that there are out of three hundred and [52] ninety-one bars, eighteen short, that is, when you counted them right recently?

A. Here is what I say: I do not think about it at

(Testimony of George J. Flurshutz.)

all. I say what I know, that the bars I took were three hundred and seventy-eight bars, and in checking the invoice, I found that it called for three hundred and ninety-one bars.

Q. Thirteen less than the invoice you think it calls for? A. I do not think, I know.

Q. You could not be mistaken about the number of bars that the invoice calls for, do you think?

A. Well, I do not think I would be.

Q. Well, you said you know that you were not thinking, but that you know. I want to know whether or not you are still willing to state that you cannot be mistaken about the number of bars that the invoice calls for.

A. I do not say that: I said there were three hundred and seventy-eight bars that I counted; that is what I know, because I did that.

Q. But you would not say now that you might not be mistaken about three hundred and ninety-one being called for on the invoice?

A. My business there was to count the exact number of bars, and that is the number of bars I found. That was my business there.

Q. In counting the number of bars there, what you call a bar, and to let you know what I am trying to get at, I want to say that there may be confusion by reason of the fact that certain bars were cut.

A. I always consider a bar is a piece of steel. If there [53] was a piece of iron or steel on the floor there, six feet long, I call that a bar.

Q. So that you counted each piece, if there was two

(Testimony of George J. Flurshutz.)

feet, or five feet or sixteen feet, you would call that a bar? A. I would call that a bar, yes, sir.

Q. Of course you have no knowledge of any kind as to what may have been put into that warehouse eighteen months ago? A. No, sir, I have not.

Q. You say that the—that your attention was called to the matter for the first time only within two weeks? A. Practically so, yes.

Q. Now, as I understand you, you think—I do not mean anything by that—I mean to say that you say—(Interrupted.) A. I understand you.

Q. There were five less bars of choker hook steel than the invoice called for?

A. Well, that is according to the way that the invoice reads. Your invoice reads, “seven bars,” and later down below, it says that “twenty foot bars cut in two,” that would exactly mean that there were fourteen bars according to that invoice, whereas I only found two bars of that one particular size.

Mr. BRUENER.—Two bars cut in two.

A. No, sir, two bars. I explained to the gentleman that a piece of iron, whether it is five or seven or sixteen feet long, I call a bar.

(Mr. ROBERTS.) [54]

Q. Did you count fourteen or seven?

A. I did not count only two.

Q. I know, but you have given two figures, three hundred and ninety-one and three hundred and seventy-eight. In reading that number, three hundred and ninety-one, you counted fourteen bars of choker hook steel, did you not? A. Exactly.

(Testimony of George J. Flurshutz.)

Q. Yes, so that you counted that choker hook steel as invoiced, was fourteen bars?

A. It is seven in this (indicating).

Q. I mean seven, yes; that is the way you interpreted that invoice? A. Yes, sir.

Q. And that went into this total of three hundred and ninety-one?

A. Yes, sir. That is as I remember, I took the total number of bars showing in your invoice, and doubled it.

Q. You doubled that in making your count of three hundred and ninety-one? A. Yes, sir.

Q. Well, now, if it should turn out that it was listed the other way, that would make a difference of seven bars right through, would it not?

A. What do you mean by listed the other way?

Q. Repeating question, I mean if it were listed in that invoice as seven and counted as seven, why it would make a difference of seven bars? I just wanted to see if I understood you about this doubling up. You counted seven bars more, as I understand [55] it, than it shows on the invoice. You say the invoice shows seven bars?

A. Seven bars, yes, sir.

Q. And you counted it fourteen?

A. I counted it two.

Q. No, sir, you counted it fourteen, when you figured it three hundred and ninety-one?

A. Yes, when I tabulated it.

Q. You counted it fourteen in order to get three hundred and ninety-one bars?

(Testimony of George J. Flurshutz.)

A. Yes, in checking the total of the original invoice.

Q. So you counted seven bars more than—seven bars more than we did?

A. Well, considering that your invoice calls for twenty foot bars cut in two,

Q. In other words you took this invoice, and you thought that Neumeyer and Dimond didn't know what they were doing, and that it ought to be doubled, and you proceeded to double it? That is what you did, didn't you? A. No, sir, I did not.

Q. Well, it is on here as seven and you counted it fourteen any way?

A. Yes, that is what I said I did. You say at the bottom of your invoice that those bars were twenty foot cut in two. That would make fourteen, would it not?

Q. No, sir. A. I think it would.

Q. Mathematically it would, but according to this invoice also it would. You are mistaken. I am not questioning your motives at all, but you are just honestly [56] mistaken. Now, aside from that, you found missing one bar of one-inch?

A. I did not say that I found that.

Q. Well, you did not find it?

A. Certainly not.

Q. It was not there?

A. Well, I would not say that that is the size. I know there is one other shortage, and it is my recollection it was the one-inch, but I would not swear.

Q. But you did find one that was not on there at

(Testimony of George J. Flurshutz.)

all? A. Yes, sir.

Q. Was that more or less than the one that was missing? A. What do you mean by more?

Q. Well, in quantity.

A. Well, I imagine it would be. It would weigh more.

Redirect Examination.

(By Mr. BRUENER.)

Q. I think counsel has made—unintentionally made you say something that you did not intend to say with reference to doubling up the whole order?

A. Well, I was going to speak about that. With reference to the last two bars, and also the two hundred and fifty feet, should not be doubled. The last two items were only eight feet each.

Witness excused. [57]

[Testimony of Robert Gillispie, for Defendant.]

ROBERT GILLISPIE, a witness produced on behalf of the defendant herein, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. BRUENER.)

Q. What is your name?

A. Robert Gillispie.

Q. You live in Seattle, Mr. Gillispie?

A. Yes, sir.

Q. How long have you lived there?

A. Seven years.

Q. What business are you in?

A. Logging supplies.

(Testimony of Robert Gillispie.)

Q. You are connected with the firm of the Mine and Mill Supply Company, are you not?

A. Yes, sir.

Q. I will ask you to state whether or not at my request you made a tabulation, taking Defendant's Exhibit "C" herewith shown you, as a basis, and figured out the shortage or overweight, as the case may be, of the different sizes of steel, and of the number as shown on that tabulation between the amount ordered, that is the length ordered, and the length actually shipped?

A. Yes, sir; I did.

Q. Just explain, taking for example, the first item on Defendant's Exhibit "C." I wish you would just explain the tabulation which you made.

Mr. ROBERTS.—As I understand it, Mr. Gillespie, you have not checked up this steel at all?

A. No, sir. [58]

Mr. ROBERTS.—Never have seen it?

A. Never have seen it; no, sir.

Mr. ROBERTS.—And you do not know anything about it, except some information given to you by someone else?

A. I only know what I saw in the invoice and the order.

Mr. ROBERTS.—I think I have been fairly liberal in allowing these figures and all that, but I think that this is going a little bit too far, to let Mr. Gillispie take this and say that it shows certain results. They are in evidence.

The COURT.—Complicated figures of this kind, I think it is competent for some witness to make cal-

(Testimony of Robert Gillispie.)

culations from them. If he is mistaken, I think it can be corrected. You have the exhibits here.

Mr. BRUENER.—Anybody can figure it out; it is a matter of figuring it out. It is simply a matter of arithmetic, and it is a convenient way of getting it before the Court and the jury.

The COURT.—As long as the tabulations have been partly made, it might be completed by adding that writing.

Mr. ROBERTS.—I object on the ground—this witness simply asked to take two certain papers here, about neither of which does he know anything, and then from those two papers to read a certain result. Now, I object to that because I cannot be allowed to do it, and furthermore because it would be a mere repetition of what the papers show. He has to take the two papers, because he cannot do it from one. Are you just asking him to state what the computations are on that one paper?

Mr. BRUENER.—No, sir; I can tell you in a very few words the figures I have made. [59]

Objection overruled.

Q. Take the first item, and explain that computation?

A. The first item calls for six $11\frac{1}{2} \times 21\frac{1}{2}$, 60 feet, 10-foot bars, or 20-foot bars cut in two, and I find according to this that they shipped 77 feet, $21\frac{1}{4}$ inches, showing a weight of 983 pounds. Now I figure that that would be an overshipment of 17 feet, $21\frac{1}{4}$ inches.

Mr. ROBERTS.—That is, you mean there was

(Testimony of Robert Gillispie.)

shipped 17 feet, $2\frac{1}{4}$ inches more than the order called for?

A. Yes; and I figured to get at the weight of this over shipment if 77 feet, $2\frac{1}{4}$ inches weighed 983 pounds, how much would 60 feet weigh, or what was ordered.

Q. Or, in other words, what would 17 feet, $2\frac{1}{4}$ inches weigh?

A. Yes; and I took their own figures for it.

Mr. ROBERTS.—I cannot object to that, because he said we sent out more than we were going to charge you with, and I am satisfied with that.

Mr. BRUENER.—I do not know whether you are giving us that free or not. I think it is to the contrary.

Q. Did you make that computation with reference to each kind and description of steel that is shown on that exhibit? A. Yes, sir.

Q. And did you tabulate those figures that you made? A. Yes, sir.

Q. Are they correct, as far as you know?

A. As far as I know, they are correct. Those are my figures.

Mr. BRUENER.—I would like to offer in evidence this tabulation or summary as defendant's next exhibit.

Mr. ROBERTS.—My goodness, is that a new one?

Mr. BRUENER.—Yes. [60]

The COURT.—It may be admitted, with the same understanding, simply put in that shape for the jury to more readily understand, or grasp it, and to boil this thing down.

(Testimony of Robert Gillispie.)

Whereupon said document is admitted in evidence and marked Defendant's Exhibit "G" of this date.

Cross-examination.

(By Mr. ROBERTS.)

Q. Now, this matter of figuring out weights of steel is a complicated thing, is it not?

A. Not very, when you have the figures before you.

Q. When you have the figures before you?

A. Yes, sir.

Q. Well, I do not mean that; I mean when you come to figure it from the steel itself?

A. Not if you have a pair of scales to put it on.

Q. You are not pretending to do that. I understand you simply tabulated another fellow's tabulation, which had been tabulated from another tabulation; is that what you did? A. Yes, sir.

Q. I want to know what you know of this thing of getting at an actual shipment of steel. Let me put another question to you, Mr. Gillispie: It is not an unusual thing for an order to vary somewhat?

Mr. BRUENER.—I object to that as incompetent, irrelevant and immaterial, and not proper cross-examination.

Mr. ROBERTS.—They have shown that after all this tabulation and all this retabulation, that one bar was short, but that there was another bar in place of that, and that there were a couple of bars of choker steel out of a shipment of [61] thirty-eight hundred dollars' worth; I want to show that, even assuming that that is true, that that is not an unusual variance in an order of this magnitude.

(Testimony of Robert Gillispie.)

Objection overruled.

Mr. BRUENER.—We have not questioned the witness upon that point, if the court please. If they desire to make him their own witness—(Interrupted.)

Mr. ROBERTS.—If you make the point that it is not proper cross-examination. I think that the objection is good.

Witness excused. [62]

[Testimony of George A. Mills, for Defendants.]

GEORGE A. MILLS, a witness produced on behalf of the Defendants herein, being first duly sworn, testified as follows, to wit:

Direct Examination.

(Mr. BRUENER.)

Q. Your name is George A. Mills? A. Yes, sir.

Q. And you live in the City of Tacoma?

A. Yes, sir.

Q. And you are connected with what company?

A. I am in the employ of Hunt & Mottet.

Q. In what capacity?

A. Foreman of the warehouse for iron and steel.

Q. How long have you been engaged in that business? A. Something like sixteen years.

Q. Did you, at the request of the Folsom Logging Company, examine a shipment of steel in the freight warehouse in Hoquiam? A. Yes, sir.

Q. In the Northern Pacific freight warehouse at Hoquiam, and did you measure the different bars of steel that you found there? A. Yes, sir.

Q. With whom did you do that?

(Testimony of George A. Mills.)

A. With the gentleman—I do not remember his name, but he was on the stand here a few minutes ago.

Q. How did you do it?

A. Measured the length with a steel tape line, and the diameter with a calliper rule.

Q. What is a calliper rule?

A. Here is the one that I used there (indicating). You lay it [63] on the iron like this (illustrating), and that gives the diameter of the bar.

Q. Did you first select out of this shipment the different kinds before measuring?

A. Yes; laid them on the flat, each size by itself, and then measured them.

Q. Did you take each little pile and measure it?

A. Yes; and as fast as we measured each little pile, we moved it entirely out of the way with a chalk mark on them.

Q. You measured each bar and put down the length of each and every bar?

A. Each and every bar; yes, sir.

Q. And put them into a book? A. Yes, sir.

Q. Are these the figures that you made (indicating), and did you make those figures at the time you measured each bar, and the length of each bar?

A. Yes; those are my figures. I made them on the 16th and 17th of this month.

Mr. BRUENER.—I will offer this in evidence.

Mr. ROBERTS.—Still another book?

Mr. BRUENER.—Still another book.

The COURT.—It may be admitted.

(Testimony of W. W. Brown.)

(Whereupon, Said Book is admitted in evidence, and marked Defendant's Exhibit "H" of this date.)

Witness excused. [64]

[Testimony of W. W. Brown, for Defendant.]

W. W. BROWN, a witness produced on behalf of the defendant herein, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. BRUENER.)

Witness testified that he is the machinist, employed by the Polson Logging Co. at its main camp, called "Headquarters Camp," and had been so employed for a period of six years; that in September, 1912; Mr. Sulcove presented himself to the witness in the machine-shop; that Sulcove introduced himself to witness, handed witness a business card showing his name and business, and said that he had been sent up by the office, for the purpose of getting the sizes of the material the camp used there and other information; that Mr. Kline was the Superintendent and would be around shortly; that witness was busy and could not go with him at that time; that Sulcove requested permission to look around, and witness told him he could go wherever he pleased; that Sulcove was in different departments of the shop and was in and out of the machine shop, and when witness could see him, the latter was looking over the material, broken parts, etc.; occasionally he came to witness for information about material and the size thereof, and if it was large enough, etc.; that the agent had a scratch tablet and jotted down consider-

(Testimony of W. W. Brown.)

able information on this paper; that the agent was around about an hour and a half when Mr. Kline, the superintendent, came, which was about at 11:30 in the morning; that Kline and the agent talked for some time, but not in the presence of witness, but witness was called over a number of times to give information. Witness denied that he at any time told the agent that the camp needed material, and said there was nothing really necessary at that time; that he did not give the agent the number of bars [65] or any number of bars that appears upon the original order introduced by plaintiff, and did not give him the different descriptions or other specifications appearing on such order.

Witness then took a copy of the order and went over it, item by item, and explained that many sizes were not used by the company at all, and that for many items shown on the order, the company always used Norway Iron instead of steel, and in other respects the order was not such a one as could or would be used by the Polson Logging Co.

Cross-examination.

(By Mr. ROBERTS.)

On cross-examination witness testified that the Polson Logging Co. had only one main railroad, with different spurs running out from the main line, operated nine camps, and in general was a large concern; that when Mr. Sulcove came to camp he handed witness a card, but witness denied that it had the name of Mr. Kline or Mr. Brown thereon; admitted that Mr. Sulcove asked for information about sizes

(Testimony of W. W. Brown.)

and the kind of material used, and that the witness gave him such information; denied that he had told Sulcove that the camp needed anything at that time.

(Witness excused.)

[Testimony of P. F. Kline, for Defendant.]

P. F. KLINE, a witness produced on behalf of the defendant herein, being first duly sworn, testified as follows:

Witness was and is the superintendent of the defendant company, and he testified substantially as witness Brown, whose testimony is immediately hereinabove set out.

[Testimony of J. C. Shaw, for Defendant.]

J. C. SHAW, a witness produced on behalf of the defendant herein, having been heretofore sworn, testified as follows:

Direct Examination.

(By Mr. BRUENER.) [66]

Testified that he was the Chief Accountant of the defendant company, and connected with the defendant for a period of fourteen years. Testified that he does almost all of the buying of the merchandise for the cookhouses and the grocery department and the drygoods, and some small orders for iron; in the equipment line, in the rolling stock, the rails and roadbed, etc., and all heavy material, he usually does the buying at the instructions of Robert Polson. Testified that Mr. Sulcove had come to the office for two years previous and had never obtained an order for steel; that in September, 1912, when Sulcove

(Testimony of J. C. Shaw.)

came to the office, witness told him that the company was not open for any steel; that it had plenty in the warehouse; that Sulcove then wanted to go to camp, which permission was refused him by witness; that in order to go to camp he would have to get a pass from Robert Polson; that salesmen are not allowed at camp, and that to his knowledge he did not give Sulcove a card with the name of Mr. Kline and Mr. Brown written thereon; denies that he told Sulcove that he would call up Mr. Brown and Mr. Kline on the telephone and advise them of his coming; that Sulcove then went out and returned two days later, with the statement that he had been up to camp and that he had a few sizes of steel, and he showed witness a little slip of paper with a few sizes thereon, and he said that Mr. Kline was very desirous of trying some of the steel; that witness told him that if Kline wanted those few sizes, he would order them; that he signed an order for a few bars of steel at that time, and that the signature of "Polson Logging Company, per J. C. Shaw" on the original order introduced by plaintiffs, was his signature; that Sulcove did not give him a copy of the order and that the order introduced in evidence by the plaintiffs, was not the order [67] that he had signed, or, in other words, that this order contains more items than it did contain when he signed the order; that the order at the time he signed it, contained only specifications for four or five bars of steel; that he never heard of the order again until February of the next year, when the invoice came from Neumeyer & Dimond; that he gave the order

(Testimony of J. C. Shaw.)

for three or four bars, upon the agent's statement that Mr. Kline wanted the same.

Cross-examination.

(By Mr. ROBERTS.)

Witness admitted that he had bought small orders of iron and steel before and usually keeps a copy of all orders that go out; admitted that the signature on the order was his signature.

(Witness Excused.)

Plaintiff's Exhibit 10 was admitted in evidence without objection.

[Testimony of Robert Polson, for Defendant.]

ROBERT POLSON, a witness produced on behalf of the defendant herein, being first duly sworn, testified as follows:

That he lives in Hoquiam, and is the manager of the Polson Logging Company, and Mr. Alexander Polson is the President of the Polson Logging Co.; that the first time he heard of any order claimed to have been given to Neumeyer & Dimond, was in February, 1913, when he received an invoice in the mail for this steel. (Referring to Defendant's Exhibit "F.") He looked over the order and found it so strange that he looked through all the office records to find if there was any copy or any record of any such order, and he could find none, and he then asked Mr. Shaw about the order; and Mr. Shaw told him that he had given no such order; that witness has general charge of all the camps and is [68] a practical logger, having been in the business since 1894; that the company at no time ever purchased even a quarter of a carload of

(Testimony of Robert Polson.)

steel, but they purchase only a few bars at a time, and that there is a warehouse in back of the office at Hoquiam, in which they keep the tool steel, and this supply in the warehouse is always kept up by buying a few bars at a time; that he never met Mr. Sulcove except a year after the order was given, and that he had not given Mr. Sulcove a pass to go up to camp a year previous. He then went over the items on the order, specifically, and called attention to many items which were never used by the company and to many sizes which could not be used; also, that the quantities ordered there would last the company for a good many years to come.

(Witness excused.)

[Testimony of Alexander Polson, for Defendant.]

ALEXANDER POLSON, a witness on behalf of the defendant herein, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. BRUENER.)

That he had lived in the State of Washington since 1879; that he is the President of the Polson Logging Co.; that the first he ever knew of an alleged order to Neumeyer & Dimond, was when his brother called his attention to an invoice in February, 1913; that his company had never purchased a carload of steel at any time. And his testimony in other respects, was substantially as Mr. Robert Polson's.

Redirect Examination.

He testified that his company first learned of any

(Testimony of Alexander Polson.)

discrepancy in the number of bars and of the kind and character and description of the steel sent, with that specified in the order, was shortly before the trial and after Mr. Mills and Mr. Flurschutz [69] had measured and weighed the same.

(Witness excused.)

Defendant's Exhibit "I" was then introduced without objection.

Defendant's Identification "A" was then introduced as Defendant's Exhibit "A-1"; also Defendant's Exhibit "J."

Defendant rests. [70]

Rebuttal.

[**Testimony of George Christoph, for Plaintiff (in Rebuttal).**]

GEORGE CHRISTOPH, a witness produced on behalf of the plaintiff herein, being first duly sworn, testified in rebuttal as follows:

Direct Examination.

(By Mr. ANDERSON.)

Q. What is your name? A. George Christoph.

Q. What is your business?

A. Seattle Drayage & Storage, Seattle.

Q. Your Company handles shipments of freight?

A. Yes, sir.

Q. Have you ever transacted any business for Neumeyer & Dimond? A. Yes, sir.

Q. Through your office in Seattle? A. Yes, sir.

Q. In connection with the Polson Logging Company?

(Testimony of George Christoph.)

A. Yes, sir. Distribution of pool cars of steel and the like, manufactured or turned out by Neumeyer & Dimond.

Q. I show you Plaintiff's Exhibit No. 12, for identification, do you recognize that? A. I do, sir.

Q. Have you had them in your files?

A. Yes, sir.

Q. Since the date it bears? A. Yes, sir.

Q. What date is that? A. May 12, 1913. [71]

Q. What does it pertain to be?

A. It calls for twelve bars of $1\frac{1}{4}$ by $4\frac{1}{2}$ steel, shipped to the Polson Logging Company by the Northern Pacific May 12th.

Mr. ANDERSON.—We will offer that in evidence. No objection.

(Whereupon said document was admitted in evidence and marked Plaintiff's Exhibit No. 12 of this date.)

Q. I hand you Plaintiff's Exhibit No. 11; do you recognize that? A. Yes, sir.

Q. What does it cover?

A. Thirty-five bundles, one hundred and eighty-eight bars of steel and one hundred and ninety-one bars of steel, 28,265 pounds, under Neumeyer & Dimond order, 2012, shipped to the Polson Logging Company on March 8, 1913.

Q. That paper has been in your files since that date? A. It has.

Mr. ANDERSON.—I will offer that in evidence as Plaintiff's Exhibit No. 11.

No objection.

(Testimony of George Christoph.)

(Whereupon said document was admitted in evidence and marked Plaintiff's Exhibit No. 11 of this date.)

Q. On both of these papers it bears receipt?

A. My signature, Seattle Drayage & Storage Company, by myself.

Q. This one (indicating)?

A. This signature on both of those are receipted by the Northern Pacific. [72]

Cross-examination.

(By Mr. BRUENER.)

Q. This second shipment of twelve bars, $1\frac{1}{4}$ by $4\frac{1}{2}$ steel was shipped,—it bears date 5-12-13. That would be May 12, 1913? A. Yes, sir.

Q. And it was shipped approximately two months later than the first shipment of steel was sent, two months later than the other steel as shown by the other bill of lading, or whatever you call it?

A. Yes, sir.

(Witness excused.)

Mr. ROBERTS.—If the Court please, Mr. T. B. Sharp testified here yesterday as agent for the Railway Company at Hoquiam, and introduced the one bill of lading that the jury now has. I wired to him this morning, and have a telegram back, and counsel has consented that I may introduce it.

(Whereupon said telegram was admitted in evidence and marked Plaintiff's Exhibit No. 13 of this date.)

(Counsel for plaintiff reads Plaintiff's Exhibit No. 13 to the jury.)

(Testimony of George Christoph.)

Mr. BRUENER.—I consented that counsel might read this telegram. Now, it would appear that twelve bars of steel were shipped two months later, and when I put Mr. Sharp on the witness stand, I am satisfied that he did not know of it, and I am sure that I did not know of it, and I consent [73] that this telegram be put in so that it may be understood there was no intention on our part in any way to deceive any one in this matter, because we had no knowledge of this second shipment, and I am sure that Mr. Sharp did not.

Mr. ROBERTS.—That may be true, because Mr. Sharp wired back very promptly this morning when I wired him with respect to this second shipment.

**[Testimony of William E. Neumeyer, for Plaintiff,
(in Rebuttal).]**

WILLIAM E. NEUMEYER testified in rebuttal for plaintiff, as follows:

Testified that he sells a great deal of tool steel to logging concerns and that the order taken from the Polson Logging Co. was a small order for a concern of that size. He denied Mr. Robt. Polson's testimony, to the effect that it would take years to use up such an order.

(Witness excused.)

**[Testimony of M. S. Sulcove, for Plaintiff (in
Rebuttal).]**

M. S. SULCOVE, on rebuttal, testified substantially as Mr. Neumeyer.

(Witness excused.)

Plaintiff's Exhibit No. 14 was then offered in evidence without objection.

[Testimony of Alexander Polson, for Plaintiff (in Rebuttal).]

ALEXANDER POLSON, on sur-rebuttal, testified that he had absolutely no knowledge of the second shipment of steel testified to by Mr. George Christoph. [74]

Q. The first knowledge you had was here,— (interrupted.)

A. The first knowledge I had was here this morning.

Cross-examination.

(By Mr. ROBERTS.)

Q. You would not have taken it if you had known it was there?

A. If I had known it was shipped by Neumeyer & Dimond on this same order, I would not have taken it, no, sir.

(Witness excused.)

[Motion for Directed Verdict, etc.]

Mr. BRUENER.—If the Court please, I would like to interpose a motion at this time, and I would move the Court at this time to direct the jury to render a verdict in favor of the defendant upon these grounds:

That the evidence conclusively shows that the plaintiff has not complied with its contract, assuming all the other things about the contract, in shipping the goods shown on this order. I do not desire to

argue that at any great length at this time, but I desire to merely call the Court's attention to this fact: Leaving aside the question of the number of bars, because there probably will be some dispute about that, I will not discuss that or call your attention to it, but the Court will remember that Mr. Sulcove said he did not remember anything about the order; that he had nothing to do with it after it had been sent out. Mr. Neumeyer also testified that he knew nothing about the shipment after the order was sent in; that he just saw the shipment in the freight-shed in Hoquiam in a general way.

(Further argument by counsel for the defendant.)

[75]

The COURT.—Motion denied. Exception allowed.

Thereupon, after the close of the testimony and before the argument of counsel, defendant's counsel handed to the Court the following instructions requested by defendant to be given to the jury, to wit: Defendant's Requests Nos. 1, 2, 3, 4, 5 and 6.

(Jury addressed by counsel for the respective parties.)

Instructions.

Gentlemen of the Jury:

The Court will instruct you regarding the law in this case. You will have the pleadings with you when you go out to the jury-room. These consist of the complaint and the answer and the reply. You will have those pleadings with you there, and if you have any doubt left in your minds after the Court has instructed you about what the allegations are

which are contained in these pleadings, you will at all times have the pleadings with you in the jury-room to resort to to determine just what the issues are. The Court will summarize the pleadings briefly, not thereby intending to excuse you from resorting to them, but in order that you may have more clearly in mind the dispute between the parties while the instructions are being given. The plaintiff is composed of a firm— (Interrupted.)

Mr. ROBERTS.—If the Court please, you will remember in the evidence that Mr. W. E. Neumeyer testified that now he is a member of the firm, and that he became such since the contract, and counsel has kindly consented that the complaint may be amended by stating the fact that at the time of the contract the firm was as alleged, excepting that it has now the addition of W. E. Neumeyer. [76]

The COURT.—Very well, that may be considered.

It is alleged that on the date mentioned in this complaint that the defendant corporation gave the plaintiff an order for certain merchandise, and that the plaintiff accepted the order and filled it according to its terms, and that the defendant has failed to abide by its terms and failed to pay the amount it agreed to pay when it gave the order.

The defendant comes into court in its answer and says that it did not give any such order. Then it goes on with an affirmative defense, setting up the claim, or a recital of how this agent presented himself to the office and made certain representations, of his going out to camp and making certain other representations, and then coming back to the office again

and presenting himself to Mr. Shaw, alleged to be the defendant's bookkeeper, and representing to Mr. Shaw that these men out there at the camp had represented to him that they needed certain steel, and that his Company manufactured the steel they sold, and that thereupon Mr. Shaw gave him an order for a very much less amount than appears on this contract—a copy of the contract is attached to the complaint which you will have with you, as well as the original—that these representations of this agent were fraudulent, and that because of them this contract that Mr. Shaw signed, that he was induced to sign it by reason of these false and fraudulent representations.

Now, in this case, before the plaintiffs can recover, they must show by a fair preponderance of the evidence that the contract they sue on was made with the [77] defendant; that they performed it and that the defendant has not performed it. If you conclude that the contract was entered into as written, and you come to consider the question of whether it was fraudulently obtained, before the defense can escape its payment then, it would be necessary for it, the Polson Logging Company, to show by a fair preponderance of the evidence that this fraud has been perpetrated as described by it in its answer.

Now, to consider these questions as I have outlined them to you, logically, the first thing to consider would be whether the defendant Company made this contract, executed this writing upon which the plaintiffs have brought their suit. The defendant is a corporation. It can only act through agents; it does

nothing by itself. If Mr. Shaw was the general buyer for the Polson Logging Company, but if there was some secret limitation or instruction upon the amount for which he would make a single purchase, or a single purchase of steel, without consultation with his superiors in the corporation, that would not bind the parties dealing with him, providing Mr. Shaw had been held out to the public as a general buyer, that is, it would not bind the persons dealing with him, unless they knew of the fact that there was this instruction or limitation upon his authority to buy. When you have determined that question in your minds, if you find that Mr. Shaw did not have any such authority, and that the plaintiffs knew it, or that it was so well known that they should, in the situation that their agent was placed there, have known that fact, why, you would not have to go any further. It would not be the defendant's contract unless Mr. Shaw [78] had the actual authority, or the apparent authority to make the contract; but if you determine that he either had the actual authority or that it was in the apparent scope of his authority, that he was held out in the eyes of the public to make a contract, and that he did make some contract, then you would go on to the next step, to see whether Mr. Shaw signed this contract that has been introduced in evidence, and a copy of which has been set up in the pleadings. If you find that he did not sign that contract as it appears, as it has been introduced and as it has been plead, but that he signed some other contract,—the Court is not exactly clear what Mr. Shaw's position there is; you are the sole and exclu-

sive judges of the testimony, and you will not be influenced by the Court's recollection of it, but whether Mr. Shaw meant to testify that this order, that something was added to it after he signed it, or that he was busy and this man came back and told him, "I have written down these three bars of steel we mentioned, you sign it," and he signed it under those circumstances, I do not remember. But if you conclude that the order was different than it has been introduced here, or plead, than when he did sign it, or if you should fail to find by a fair preponderance of the evidence that it was, at the time he signed it, as it has been introduced in evidence, and as it is plead, why that would be as far as you would go. This is the identical contract upon which this suit was brought, and this must be the one that was entered into before the plaintiff can prevail.

When you come to this matter of fraud, when you [79] come to consider that question, as I told you, the burden is upon the defendants to establish that defense. It is an affirmative defense and before the plaintiffs could be defeated from recovery upon that ground, the evidence must clearly and satisfactorily establish the fact that there was fraud; fraud is not presumed. Of course, the Court probably had better instruct you now what fraud consists of. The law has never undertaken to define what fraud is, that is, to make a comprehensive definition to include all fraud, because it has been found that the ingenuity of man is such that by the time the courts or legislatures would define fraud, that man would find some way or devise something else just as harmful that did

not come within that definition, but briefly, the fraud must contain the following elements, fraud of the kind of which complaint is made here: That is, a party in the situation that this agent Sulcove was whom it is claimed made these false representations, that he must represent something to be true; that that which he represents was not true, but that it was false; that when he stated it to be true, that he knew it was false; that he stated it with the idea of inducing the party to whom he stated it to act on the belief that it was true, and that it was such a statement as an ordinarily careful and prudent man, under the circumstances, would believe to be true, and that the man to whom he made it, Mr. Shaw in this case, actually did believe it, and acted on account of it in signing this contract, and that damage followed therefrom, or would follow if the contract was enforced. Now, you will notice in that instruction [80] that the false representation must have been made with the idea of its being acted upon, inducing Mr. Shaw to enter into the contract. Now, as something has been said about something that this agent said about his house manufacturing steel. If that was just a remark thrown in the course of a conversation with no intention of influencing Mr. Shaw in making this purchase, a matter where men might differ about what a house would have to do to manufacture, whether it actually had to have a factory,—it is a matter of common knowledge to you, these two partners would not have to make this steel with their own hands in order to come within the definition of having manufactured it. A general statement like that

would be susceptible of different meanings and you will, in the light of the circumstances, give it its ordinary meaning, and unless the agent intended to mislead and deceive and influence Mr. Shaw to make the purchase when he made that statement or such statements as you believe from the evidence that he did make, you will disregard it.

Now, a further instruction I will give you concerning fraud; a man who does not exercise ordinary prudence and caution himself in entering into a contract, cannot complain successfully. If Mr. Sulcove did nothing to deceive Mr. Shaw about what was in that order, and after a general talk, simply that he had been out there at the camp and looked around, a general talk upon which Mr. Shaw as an ordinarily careful and prudent man, situated as he was, would have no justification in relying upon as the basis of a contract, and the agent presented it to him, and he [81] simply signed it without looking at it, he cannot complain. But if the agent, after talking with Mr. Shaw regarding these few bars of steel, three, four or five, or whatever the small number was that Mr. Shaw testified about, he told him that it was all right, to write it up and then bring it in afterwards, and if he then brought it back and it contained all of these things, and he waited for Mr. Shaw and Mr. Shaw was busy and then gave it to Mr. Shaw and said, "I have written that up," and then Mr. Shaw had signed it, that would be fraud, and then the company would not be bound by a contract secured in such an unfair way, if you believe that the evidence clearly and satisfactorily shows that.

I have told you in the course of these instructions that fraud is not presumed. Now, the intention to deceive, as I have pointed out to you, is one of the elements of fraud, what a man's intentions are, whether or not he intends to deceive you, is a process of his mind; you cannot tell what a man intends, except by what he says and does, and the circumstances under which he says and does it.

A great deal of the evidence in this case has been admitted because there was a charge of fraud in the securing of this order. When an allegation of that kind is made, the rules of evidence are different; the bars are thrown down, and all the surrounding circumstances, and a great deal of evidence goes in, to enable you to make up your minds whether there was any intention to deceive. [82]

The burden of proof is upon the plaintiff as I pointed out to you, to show that the contract was made as they plead and that it was performed by them, that is, they must, before they can recover in this suit have furnished, as agreed by them, when they accepted this order, the kind, the amount, and the description of property included in the order for this merchandise. If they did not they cannot prevail.

The verdicts which I will submit to you, one finds for the defendant and one for the plaintiffs. The prayer of the Complaint, I believe, is for interest. If you find the performance of the contract by the plaintiffs, if you find they have under the instructions I have and will give you, you will insert in the blank that is left in one verdict, this amount, \$3,395.39, with

interest at six per cent from March 6th, 1913.

The Court will read to you certain written instructions. In so far as they may be repetitions of what I have already told you in substance you will not conclude that the Court is trying to impress upon your minds one part of the case to the exclusion of another part upon which there has been no repetition.

“This action is brought by Gustav Neumeyer and Abraham Diamond, copartners doing business under the name and style of Neumeyer & Diamond against the Polson Logging Company, a corporation, to recover \$3,895.39, together with interest at the legal rate, from March 6th, 1913, said sum being the alleged purchase price of certain goods wares and merchandise, which the plaintiffs [83] allege defendant ordered from them. The order which the plaintiffs allege was given by the defendant— (interrupted.)

Mr. BRUENER.—Excuse me, I think that was requested; I will withdraw that request and save time.

The COURT.—“The burden of proof is upon the plaintiffs to prove the material allegations of their Complaint by the preponderance of the evidence. The burden is upon them to prove the contract, the terms thereof, the performance of the contract on their part and also that the goods delivered or tendered to the defendant complied with the contract. It is also incumbent upon the plaintiffs to prove by a fair preponderance of the evidence that J. C. Shaw, who signed the order on behalf of the defendant, had authority or apparent authority, to sign this order on behalf of the defendant company, if you find that

he did so sign such order.

The burden of proof is upon the defendant to prove the material allegations of its affirmative defense by a fair preponderance of the evidence. In other words, if you find that J. C. Shaw, acting for the defendant company, gave the order of steel sued on, and said Shaw had authority, or apparent authority to bind the defendant company by such order of merchandise, then the burden rests upon the defendant to prove by a fair preponderance of the evidence that the signature of said Shaw to said order was procured through fraud of the salesman acting for and on behalf of the said plaintiffs."

"If you find that the defendant ordered the goods, [84] wares and merchandise sued on, and gave the order as contended for by the plaintiffs, and said order was not procured through fraud, as alleged by the defendant, and you find that the person who signed said order on behalf of the defendant company, to wit, J. C. Shaw, had authority, or apparent authority, as will hereafter be explained to order said goods on behalf of the defendant company, and if you further find that the plaintiffs delivered, or tendered the delivery of steel called for by the contract to the defendant at Hoquiam, Washington, and the defendant wrongfully refused payment thereof, then you will find for the plaintiffs for the amount agreed to be paid for said goods, as is provided for in such order, with interest. In determining the fact of whether or not the plaintiffs have complied with their contract, in delivering or in tendering delivery to the defendant of the steel ordered, if you find it was or-

dered, I instruct you that to constitute a good delivery in law, so as to make the defendant liable for said steel, the steel must correspond in quantity and in kind and description with that named in the order."

"It is incumbent upon the plaintiffs by a fair preponderance of the evidence to establish that the order for the merchandise in question was given by the defendant, and in order to establish that fact, it is further necessary for the plaintiffs to establish this fact, and it is further necessary for the plaintiff to establish by a fair preponderance of the evidence that J. C. Shaw had authority under the circumstances to act for the [85] defendant. If Mr. Shaw, with the knowledge of the Polson Logging Company, held himself out as the agent of such company, with authority to purchase supplies, the defendant company is bound by the contract which Mr. Shaw made with the plaintiffs for the steel, and this would be true, even if you should find that Mr. Shaw in making the contract, transgressed the instructions he had received from his principal. Any secret limitations upon his authority not revealed to the plaintiffs are no defenses to the defendant in this action. If you find that J. C. Shaw had authority to make purchases from persons with whom he chose to deal, or to make any indefinite number of purchases, he is deemed in law to be a general agent, and he is none the less a general agent because his powers do not extend over the whole business of his principal, the Polson Logging Company. It is immaterial whether or not Shaw exceeded his powers or authority, if you find that in making this purchase, if you find he did make

it, he was acting in the scope of his authority, that is, if you find the course of dealing of the defendant company, and the part taken therein by Shaw has been such as to reasonably warrant the presumption that Shaw was authorized to act in the capacity in which he was assumed to act in making this purchase, and if you find that the plaintiffs relied thereon in good faith, and the exercise of reasonable prudence, the defendant would then be bound by the acts of Shaw.”

“Fraud is never presumed. The presumption is that [86] all men deal fair and honestly with each other and the one who charges fraud assumes the burden of proving the fraud charged and before you would be justified in finding that any fraud was perpetrated by plaintiffs or their agent, you must find that defendant has proven such fraud by evidence that is clear and convincing to your minds as jurors.”

The Court in these instructions has referred to the burden of proof being upon the plaintiffs as regards making out a *prima facie* case, showing the contract and the performance by them and the non-performance by the defendant, and that the burden of proof, or the burden of showing fraud by a fair preponderance of the evidence was upon the defendant.

Now, this expression “fair preponderance of the evidence” as used in these instructions, means the greater weight of the evidence and as evidence does not weigh in the sense that material things do, the Court can only tell you that that evidence preponderates which is of such a character and so ap-

peals to your reason and your experience and your understanding as to create and induce belief in your minds if there is a dispute in the testimony, that it is still of such a character as to create and induce belief in your minds in spite of what has been brought against it.

You are, in this case, as in every case where questions of fact are submitted to the jury, the sole and exclusive judges of every question of fact in the case and the weight of the evidence and the credibility [87] of the witnesses. In weighing the evidence and in passing upon the credibility of the witnesses, you should take into account all that your experience has taught you regarding the guides which are safe, in arriving at where the truth lies in human transactions. Among the things you should take into consideration is the witnesses coming before you, how they testified, how they acted in giving their testimony, whether they struck you as trying to tell you the exact truth, neither adding to it or taking from it, telling you things just as they had seen or known them, or whether they appeared to you to be reluctant, evasive, hesitating, how they conducted themselves. On the other hand, you should take into consideration whether the witness appeared to be too willing, running on, constantly volunteering testimony about which nothing had been asked, what the law calls "Swift witnesses." Also you will take into consideration the situation in which each witness was as enabling that witness to clearly know and remember the things about which he undertook to testify, and the testi-

mony of each witness by itself, whether it is consistent as a whole, whether it is so detailed and exact and full as to induce belief in your minds, and whether it is corroborated where you would expect it to be corroborated if it were true, or whether it is contradicted by other evidence in the case. Also you should take into account the interest any witness may be shown to have in the case, and one of the plaintiffs having testified, and officers of the defendant company having testified, you will weigh their [88] evidence by the same rules that you weigh the evidence of other witnesses, including their natural interest in the result of the case.

If you should believe that any witness has testified falsely in any material matter at issue in this case, you may disregard the entire evidence of such witness, except as the same has been corroborated by other credible testimony. Before you apply this rule to the testimony of any witness, you must remember that it includes this element: It is necessary that he should have testified falsely, that means, that he testified falsely and with the obvious intention of deceiving you, not that he made a mistake, or testified in an exaggerated way, as interested witnesses are liable to do; it means that he willfully and intentionally testified falsely with the purpose of deceiving you, and not only that, but on a material matter. It is not everything that a witness says on the stand that is material in a lawsuit. It must be in some material matter; that means some element, or some part of the evidence that the case depends upon to some extent.

The COURT.—Anything further, gentlemen?

A JUROR.—I would like to ask about the weight. I am a little mixed on that, as to the shipment of the order.

The COURT.—You are the sole judges of the facts and the evidence, and a great part of it is written and part of it has gone in by word of mouth and you will have to settle that by yourselves.

Mr. ROBERTS.—I have no exceptions. [89]

Mr. BRUENER.—I desire to accept the *the* Court's refusal to grant the entire instruction Number 3 proposed by the defendant.

Exception allowed.

Mr. BRUENER.—I desire also to except to the refusal of the Court to give Instruction Number 4 requested by the defendant, also to the refusal of the Court to give requested instruction Number 6 by the defendant, and also I desire to except to the last written instruction given by the Court, which I think was propounded by the plaintiffs. The words "clear and convincing" I desire to except especially to.

The COURT.—If I used the word "convincing" I will change that to "clear and satisfactory," that is, on the instruction with regard to fraud, that is, it must be "clearly and satisfactorily shown." Otherwise, the exceptions will be allowed.

The COURT.—The case is over. I will say, Mr. Bruener, I think I went over in my general instructions what you are entitled to, in those two refusals. Both sides in this case have tried all of the fraud; it has been plead, and no objection made to the evidence, and it has been argued, but still, in my mind,

there is some question about whether some elements in fraud might lie in law, and be confined to equity, and I have tried to keep away from that point as far as I know while giving you everything I thought you were entitled to in your requests.

(Jury retires.) [90]

**[Instructions Requested by Defendant, and
Refused.]**

INSTRUCTION No. 3, requested by defendant and which was refused by the Court and exception duly taken and allowed, reads as follows, to wit:

If you find that the defendant ordered the goods, wares and merchandise sued on and gave the order as contended for by the plaintiffs, and said order was not procured through fraud, as alleged by the defendant, and you find that the person who signed said order on behalf of the defendant company, to wit: J. C. Shaw, had authority or apparent authority, as will hereafter be explained, to order said goods on behalf of the defendant company, and if you find further that the plaintiffs delivered or tendered a delivery of the steel called for by the contract, to the defendant at Hoquiam, Washington, and the defendant wrongfully refused payment thereof, then you will find for the plaintiffs for the amount agreed to be paid for said goods, as provided for in said order, with interest. In determining the fact, whether or not the plaintiffs have complied with their contract in delivering or tendering delivery to the defendant of the steel ordered, if you find it was ordered, I instruct you that to constitute a good delivery in law, so as to make the defendant

liable for said steel, the same must correspond in quantity and in kind and description with that named in the order. The defendant was not obliged to accept any less or any greater number of bars of steel than ordered, nor was the defendant obliged to accept bars of steel *or* any less or *great* length than ordered, and if the steel, or any part thereof, delivered or tendered to the said defendant, did not comply with the contract in this, to wit: that said bars of steel were less or greater in number than shown on the order sued on, or said bars of steel, or some thereof, were not of the length specified in the order, but [91] were of a greater or less length, then the defendant had a right to reject the whole of said order so delivered or tendered, because the failure of the seller, the plaintiffs in this case, to deliver the quantity specified, or to deliver steel of the length specified, constituted a total breach of the contract. The plaintiffs in this case were bound to tender or deliver the number of bars of steel called for, and were bound to tender bars of steel of the length called for, and if you find that the plaintiffs did not deliver or tender delivery of the number of bars of steel specified in the order, or the bars delivered or tendered were of a greater or less length than twenty feet cut in two, then you will find your verdict for the defendant.

35 Cyc - Sales 202, 204, 206.

Am. & Eng. Encycl. Law, 2 Ed., Vol. 24, p. 1077.

Benjamin on Sales, 4th Ed., p. 800.

Brawley vs. U. S., 6 Otto 168, 06 U. S. 168, 171, 172.

Norrington vs. Wright, 29 Law Ed., p. 366, 115 U. S. 180.

Filley vs. Pope, 115 U. S. 213; 29 Law Ed. 372.

Pope v. Allis, 115 U. S. —, 29 Law Ed. 393.

Pittsburgh Plate Glass Co. vs. Kurlin Bros. Co., 122 Fed. 414.

Kalamazoo Corset Co. v. Simon, 129 Fed. 144.

J. A. Coates & Sons vs. Huffine, 41 N. E. p. 465.

Inman vs. Elk Cotton Mills, 92 S. W. 760.

Patrick vs. Norfolk Lumber Co. (Nebr.), 115 N. W. 780.

Springfield Shingle Co. v. Edgecomb Mill Co., 52 Wash. 620.

INSTRUCTION No. 4, requested by the defendant and refused by the Court and exception to the refusal being duly taken and allowed, reads as follows, to wit:

The defendant alleges in its affirmative defense, that the plaintiffs' salesman represented to Mr. Shaw, whose name is subscribed to the order, that the goods sold and to be delivered by his, the said plaintiff's firm, were manufactured by it, and that the said Shaw, acting on behalf of his company, was induced through said representation, to give the said plaintiffs an order for steel, differing, however, from the order sued on; that said representation so alleged to have been made, was [92] false, and that the goods sold and delivery tendered by the said plaintiffs were not, in fact, manufactured by them. In this connection, I instruct you, that if you find that the plaintiffs' agent did represent to Mr. Shaw, acting on behalf of the defendant company, *this* his said

firm would manufacture the steel and that the said Shaw was induced to sign an order for steel by reason of said representation, or said representation was one of the inducements to the said Shaw signing or giving said order, or any order; and if you find further, that said representation was false and that said plaintiffs did not manufacture said steel, then I instruct you that your verdict shall be for the defendant.

INSTRUCTION NO. 6 requested by defendant and refused by the Court and exception to such refusal having been duly taken and allowed, reads as follows, to wit:

If you find that the defendant ordered the goods, wares and merchandise sued on and gave the order as contended for by the plaintiffs, and said order was not procured through fraud, alleged by the defendant, and you find that the person who signed said order on behalf of the defendant company, to wit: J. C. Shaw, had authority or apparent authority, as will hereafter be explained, to order said goods on behalf of the defendant company, and if you find further that the plaintiff delivered or tendered a delivery of the steel called for by the contract, to the defendant at Hoquiam, Washington, and the defendant wrongfully refused payment thereof, then you will find for the plaintiffs for the amount agreed to be paid for said goods, as provided for in said order, with interest. In determining the fact, whether or not the plaintiffs have complied with their contract in delivering or tendering delivery to the defendant of the steel ordered, if you

find it was ordered, I instruct you that [93] to constitute a good delivery in law, so as to pass the title to the steel to the defendant and to make the defendant liable for steel, the same must strictly correspond in quantity and in kind and description with that named in the order. The defendant was not obliged to accept any less or any greater number of bars of steel than ordered, nor was the defendant obliged to accept bars of steel of any less or greater length than ordered, and if the steel delivered or tendered to the said defendant, did not comply with the contract in this: that said bars of steel were less or greater in number than shown on the order sued on, or said bars of steel were not of the length specified in the order, but were of a greater or less length, then the defendant had a right to reject the whole of said order so delivered or tendered, because the failure of the seller, the plaintiffs in this case, to deliver the quantity specified, or to deliver steel of the length specified, constituted a total breach of the contract. The plaintiffs in this case were bound to tender or deliver the exact quantity of bars of steel called for—neither more nor less—and were bound to tender bars of steel of the length called for—neither more nor less—and if you find that the plaintiffs did not deliver or tender delivery of the exact number of bars of steel specified in the order, or the bars delivered, or tendered were of a greater or less length than twenty feet cut in two, then you will find your verdict for the defendant. [94]

AND BE IT FURTHER REMEMBERED,
That on the — day of September, 1914, the jury

returned into court and rendered a verdict in favor of the plaintiffs and against the defendant, in the sum of \$3,895.39 and interest, and thereafter and, to wit: on the 30th day of September, 1914, defendant duly filed and served a Motion for Judgment Notwithstanding the Verdict;

AND BE IT FURTHER REMEMBERED, That thereafter, on the 9th day of October, 1914, Judgment was entered in said cause, in favor of the said plaintiffs and against said defendant, in the sum of \$3,895.39, together with interest and for costs and disbursements in said action;

AND BE IT FURTHER REMEMBERED, That thereafter and to wit: on the 14th day of November, 1914, the defendant duly filed and served a Motion for New Trial in said cause;

AND BE IT FURTHER REMEMBERED, That on the 24th day of November, 1914, and in term time, the Court did, on the application of the said defendant, and for good cause shown, give the said defendant until December 20th, 1914, in which to draw up, serve and file its Bill of Exceptions in said cause;

AND BE IT FURTHER REMEMBERED, That on the 30th day of November, 1914, defendant's Motion for Judgment Notwithstanding the Verdict and its Motion for a New Trial herein, were duly presented to the Court and argued, and said Motion for new trial was by the Court overruled; to which ruling the defendant excepted and its exception was duly allowed. [95]

Dated at Aberdeen, Washington, this 30th day of January, 1915.

BRIDGES & BRUENER,
Attorneys for Defendant and Plaintiff in Error.

Grant of Writ.

The Writ of Error prayed for in the above cause is hereby granted this 2 day of February, A. D. 1915, and the amount of bond to be given by the said petitioner, is hereby fixed at the sum of Ten Thousand (\$10,000) Dollars, which bond when accepted, conditioned as provided by the Circuit Court of Appeals, shall be a cost and supersedeas bond on appeal in said action.

EDWARD E. CUSHMAN,
District Judge.

(Filed Feb. 2, 1915.) [98]

Assignments of Error.

Comes now Polson Logging Company, the defendant, and makes and files the following Assignments of Error in the above cause, to wit:

I.

The District Court of the United States for the Western District of Washington, Southern Division, erred in overruling and refusing to grant defendant's motion for a nonsuit, at the close of the plaintiff's testimony, and in refusing to instruct the jury to bring in a verdict for the said defendant, after defendant had challenged the sufficiency of plaintiffs' testimony at the close thereof. Said motion should have been granted for the reason that the plaintiffs

failed to prove that they delivered or tendered delivery of the said defendant, bars of steel of the kind, character and description called for by the contract and in accordance therewith.

II.

That the Court erred in overruling the defendant's motion for a directed verdict, at the close of all the testimony, for the reason that the evidence in the case conclusively shows that the plaintiffs did not deliver or tender delivery to the defendant, personal property of the kind, character and description called for by the contract sued on and in accordance with said contract.

III.

That the Court erred in refusing to give to the jury Instruction No. 3, duly requested by said defendant on the trial of said cause, which instruction reads as follows: [99]

INSTRUCTION NO. 3.

If you find that the defendant ordered the goods, wares and merchandise sued on and gave the order as contended for by the plaintiffs, and said order was not procured through fraud, as alleged by the defendant, and you find that the person who signed said order on behalf of the defendant company, to wit: J. C. Shaw, had authority or apparent authority, as will hereafter be explained, to order said goods, on behalf of the defendant company, and if you find further that the plaintiffs delivered or tendered a delivery of the steel, called for by the contract, to the defendant at Hoquiam, Washington, and the defendant wrongfully refused payment thereof, then you

will find for the plaintiffs for the amount agreed to be paid for said goods, as provided for in said order, with interest. In determining the fact, whether or not the plaintiffs have complied with their contract in delivering or tendering delivery to the defendant of the steel ordered, if you find it was ordered, I instruct you that to constitute a good delivery in law, so as to make the defendant liable for said steel, the same must correspond in quantity and in kind and description with that named in the order. The defendant was not obliged to accept any less or any greater number of bars of steel than ordered, nor was the defendant obliged to accept bars of steel of any less or greater length than ordered, and if the steel, or any part thereof, delivered or tendered to the said defendant, did not comply with the contract in this, to wit: that said bars of steel were less or greater in number than shown on the order sued on, or said bars of steel, or some thereof, were not of the length specified in the order, but were of a greater or less length, then the defendant had a right to reject the whole of said order so delivered or tendered, because the failure of the seller, the plaintiffs in this case, to deliver the quantity specified, or to deliver steel of the length specified, constituted a total breach of the contract. The plaintiffs in this case were bound to tender or deliver the number of bars of steel called for, and were bound to tender bars of steel of the length called for, and if you find that the plaintiffs did not deliver or tender delivery of the number of bars of steel specified in the order, or the bars delivered or tendered were of a greater or less length

than twenty feet cut in two, then you will find your verdict for the defendant.

35 Cyc-Sales, 202, 204, 206.

Am. & Eng. Encycl. Law, 2 Ed., Vol. 24, p. 1077.

Benjamin on Sales, 4th Ed., p. 800.

Brawley vs U. S., 6 Otto 168, 06 U. S. 168, 171, 172.

Norrington vs. Wright, 29 Law Ed., p. 366, 115 U. S. 180.

Filley vs. Pope, 115 U. S. 213, 29 Law Ed., 372.

Pope vs. Allis, 115 U. S. —, 29 Law Ed. 393.

Pittsburgh Plate Glass Co. vs. Kurlin Bros. Co., 122 Fed. 414.

Kalamazoo Corset Co. v. Simon, 129 Fed. 144.

J. A. Coats & Sons vs. Huffine, 41 N. E., p. 465.

Inman vs. Elk Cotton Mills, 92 S. W. 760.

Patrick vs. Norfolk Lumber Co. (Nebr.), 115 N. W. 780.

Springfield Shingle Co. vs. Edgecomb Mill Co., 52 Wash. 620." [100]

IV.

That the Court erred in refusing to give to the jury Instruction No. 4, duly requested by said defendant on the trial of said cause, which instruction reads as follows:

"INSTRUCTION NO. 4.

The defendant alleges in its affirmative defense, that the plaintiff's salesman represented to Mr. Shaw, whose name is subscribed to the order, that the goods sold and to be delivered by his, the said plaintiff's firm, were manufactured by it, and that the said Shaw, acting on behalf of his company, was

induced through said representation, to give the said plaintiffs an order for steel, differing, however, from the order sued on; that said representation so alleged to have been made, was false, and that the goods sold and delivery tendered by the said plaintiffs were not, in fact, manufactured by them. In this connection, I instruct you, that if you find that the plaintiffs' agent did represent to Mr. Shaw, acting on behalf of the defendant company, that his said firm would manufacture the steel and that the said Shaw was induced to sign an order for steel by reason of said representation, or said representation was one of the inducements to the said Shaw signing or giving said order, or any order; and if you find further, that said representation was false and that said plaintiffs did not manufacture said steel, then I instruct you that your verdict shall be for the defendant."

V.

That the Court erred in refusing to give to the jury Instruction No. 6, duly requested by said defendant on the trial of said cause, which instruction reads as follows:

"INSTRUCTION NO. 6.

If you find that the defendant ordered the goods, wares and merchandise sued on and gave the order as contended for by the plaintiffs, and said order was not procured through fraud, as alleged by the defendant, and you find that the person who signed said order on behalf of the defendant company, to wit: J. C. Shaw, had authority or apparent authority, as will hereafter be explained, to order said goods on behalf of the defendant company, and if you find fur-

ther that the plaintiff delivered or tendered a delivery of the steel called for by the contract, to the defendant at Hoquiam, Washington, and the defendant wrongfully refused payment thereof, then you will find for the plaintiffs for the amount agreed to be paid for said goods, as provided for in said order, with interest. In determining the fact, whether or not the plaintiffs have complied with their contract in delivering or tendering delivery to the defendant of the steel ordered, if you find it was ordered, I instruct [101] you that to constitute a good delivery in law, so as to pass the title to the steel to the defendant and make the defendant liable for said steel, the same must strictly correspond in quantity and in kind and description with that named in the order. The defendant was not obliged to accept any less or any greater number of bars of steel than ordered, nor was the defendant obliged to accept bars of steel of any less or greater length than ordered, and if the steel delivered or tendered to the said defendant, did not comply with the contract in this; that said bars of steel were less or greater in number than shown on the order sued on, or said bars of steel were not of the length specified in the order, but were of a greater or less length, then the defendant had a right to reject the whole of said order so delivered, or tendered, because the failure of the seller, the plaintiffs in this case, to deliver the quantity specified, or to deliver steel of the length specified, constituted a total breach of the contract. The plaintiffs in this case were bound to tender or deliver the exact quantity of bars of steel called for—neither more nor

less—and were bound to tender bars of steel of the length called for—neither more nor less—and if you find that the plaintiffs did not deliver or tender delivery of the exact number of bars of steel specified in the order, or the bars delivered or tendered were of a greater or less length than twenty feet cut in two, then you will find your verdict for the defendant.”

VI.

That the Court erred in denying defendant’s motion for judgment notwithstanding the verdict.

VII.

That the Court erred in denying defendant’s motion for a new trial, for the reason that Instructions No. 3, 4 and 6 should have been given by the Court to the jury, and because the testimony of the plaintiffs with reference to the completion of the contract on their part, was not sufficient to justify the verdict and the judgment.

WHEREFORE the defendant prays that the judgment of the said District Court of the United States for the Western District of Washington, Southern Division, be set aside and reversed.

BRIDGES & BRUENER,
Attorneys for Defendant.

(Filed Feb. 2, 1915.) [102]

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS:
That we, Polson Logging Company, a corporation, as principal, and Alex Polson, Robert Polson, and W. J. Patterson, as sureties, are held and firmly

bound unto Gustave H. Neumeyer and Abrham J. Dimond, copartners doing business under the name and style of Neumeyer & Dimond, the plaintiffs above named, in the full and penal sum of Ten Thousand (\$10,000) Dollars, for which payment truly to be made, we and each of us, for ourselves, our successors, heirs, administrators and assigns, do bind ourselves jointly and severally, firmly by these presents.

Dated this 28th day of January, A. D. 1915.

The condition of this obligation is such,—

Whereas the above-named defendant, Polson Logging Company, has sued out a Writ of Error to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment rendered in the above-entitled cause by the District Court of the United States for the Western District of Washington, Southern Division,

Now, therefore, if the above-named defendant, Polson Logging Company, shall prosecute said writ to effect and answer all costs and damages, if it shall fail to make good its plea, then this obligation shall be void, otherwise to remain in full force and virtue.

It is expressly understood and agreed by the sureties hereto, that in case of breach of any condition of this bond, this Court may, upon notice to them of not less than ten (10) days, proceed summarily in this action to ascertain the amount which such sureties are bound to pay on account of such

breach, and render judgment therefore against them and let execution issue. [102½]

POLSON LOGGING COMPANY,

By ALEX POLSON,

President.

ALEX POLSON,

W. J. PATTERSON,

ROBERT POLSON,

Sureties.

State of Washington,
County of Chehalis,—ss.

Alex Polson, Robert Polson and W. J. Patterson, being first duly sworn, on oath, each for himself and not one for the other, deposes and says: That he is a resident and freeholder within the Western District of Washington, and that he is worth the sum mentioned in the foregoing obligation, over and above all his debts and liabilities, exclusive of property exempt from execution and in property situated in the State of Washington.

ALEX POLSON.

W. J. PATTERSON.

ROBERT POLSON.

Subscribed and sworn before me this 28th day of January, 1915.

[Notarial Seal]

THEO B. BRUENER,

Notary Public in and for the State of Washington,
Residing at Aberdeen.

The foregoing bond approved as to form and sufficiency of sureties, February 2d, 1915.

EDWARD E. CUSHMAN,

Judge.

(Filed Feb. 2, 1915.) [103]

Waiver of Sureties.

The undersigned, Alex Polson, Robert Polson, and W. J. Patterson, being the sureties on the Appeal and Supersedeas Bond filed in the above cause, do hereby waive any objections to, or any claim of right or privilege by reason of the fact that the obligation of said bond runs only to two of the partners, to wit, Gustave H. Neumeyer and Abraham J. Dimond, in whose name the said suit was prosecuted, and does not run to the other partner, to wit, William E. Neumeyer, and who was made a party plaintiff at the end of the trial of said cause.

Dated at Aberdeen, Washington, this 18th day of February, 1915.

ALEX POLSON.

ROBERT POLSON.

W. J. PATTERSON.

[Endorsed]: Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Feb. 27, 1915. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [104]

Stipulation for Removal of Exhibits.

IT IS STIPULATED by and between the parties hereto, through their respective attorneys, that all of the exhibits filed in the above-entitled court and in the above-entitled cause may be transmitted and sent to the Clerk of the Circuit Court of Appeals, in the appeal of the above-entitled cause as part of the record thereof.

Dated at Seattle, Washington, this 4 day of February, 1915.

JOHN W. ROBERTS,
NELSON R. ANDERSON,
Attorneys for Plaintiffs.
BRIDGES & BRUENER,
Attorneys for Defendant.

[Endorsed]: Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Feb. 10, 1915. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [105]

[Certificate of Clerk U. S. District Court to
Transcript of Record, etc.]

United States of America,
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States District Court for the Western District of Washington, do hereby certify and return that the foregoing is a true and correct copy of the record and proceedings in the above-entitled cause as the same remains of record and on file in my office, in said District, at Tacoma, and that the same is made pursuant to praecipe of counsel filed herein, and the same constitutes my return on the annexed Writ of Error.

I further certify and return that I hereto attach and herewith transmit the original Writ of Error, original Citation, original Order extending time for filing record on appeal, and original exhibits.

I further certify that the following is a full, true

and correct statement of all expenses, costs, fees, and charges incurred and paid in my office by and on behalf of the plaintiff in error herein, for making record, certificate and return to the United States Circuit Court of Appeals for the Ninth Circuit, in the above-entitled cause, to wit:

Clerk's fee (Sec. 828 R. S. U. S.) for making record, certificate and return, 262 folios @ 15¢.....	\$39.30
Certificate of Clerk to transcript of record, 3 folios @ 15¢.....	.45
Seal to said Certificate.....	.20

Attest my hand and the seal of the United States District [106] Court for the Western District of Washington, at Tacoma, this 16th day of March, A. D. 1915.

[Seal]

FRANK L. CROSBY,
Clerk.

By E. C. Ellington,
Deputy. [107]

In the United States Circuit Court of Appeals, for the Ninth Circuit.

POLSON LOGGING COMPANY, a Corporation,
Plaintiff in Error,

vs.

GUSTAVE H. NEUMEYER and ABRHAM J. DIMOND, Copartners Doing Business Under the Name and Style of NEUMEYER & DIMOND,

Defendants in Error.

Writ of Error.

United States of America,—ss.

The President of the United States of America to
the Honorable Judges of the District Court of
the United States for the Western District of
Washington, Southern Division, Greeting:

Because in the record and proceedings, as also in
the rendition of the judgment, of a plea which is in
the said District Court before you, or some of you,
between Polson Logging Company, a corporation,
plaintiff in error, and Gustave H. Neumeyer and
Abrham J. Dimond, copartners doing business un-
der the name and style of Neumeyer & Dimond, de-
fendants in error, a manifest error hath happened
to the damage of the said plaintiff in error, as by
its answer appears, we being willing that error, if
any hath been, should be duly corrected, and full
and speedy justice done to the parties aforesaid in
this behalf, to command you, under your seal, dis-
tinctly and openly, you send the records and pro-
ceedings aforesaid, with all things concerning the
same, to the United States Circuit Court of Appeals
for the Ninth Circuit, together with this [108]
writ, so that you have the same at San Francisco,
California, in said Circuit, on thirty days from the
date of this writ, in the said Circuit Court of Ap-
peals, that the record and proceedings aforesaid be-
ing inspected, the said Circuit Court of Appeals
may cause further to be done therein to correct that
error, what of right and according to law and cus-
tom of the United States ought to be done.

Witness the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, this 2d day of February, A. D. 1915.

[Seal]

FRANK L. CROSBY,

Clerk.

By E. C. Ellington,

Deputy Clerk of the Circuit Court of the United States for the Western District of Washington.

Allowed:

EDWARD E. CUSHMAN,

U. S. District Judge for the Western District of Washington, Southern Division. [109]

[Endorsed]: In the United States Circuit Court of Appeals for the Ninth Circuit. Polson Logging Company, a Corporation, Plaintiff in Error, vs. Gustave H. Neumeyer and Abrham J. Dimond, Copartners Doing Business Under the Name and Style of Neumeyer & Dimond, Defendants in Error. Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Feb. 2, 1915. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

POLSON LOGGING COMPANY, a Corporation,
Plaintiff in Error,

vs.

GUSTAVE H. NEUMEYER and ABRHAM J. DIMOND, Copartners Doing Business Under the Name and Style of NEUMEYER & DIMOND,

Defendants in Error.

Citation.

The United States of America,—ss.

The President of the United States of America, to
Gustave H. Neumeyer and Abrham J. Dimond,
Copartners Doing Business Under the Name and
Style of Neumeyer & Dimond, Defendants in
Error, Greeting:

You are cited and admonished to be and appear in
the United States Circuit Court of Appeals, for the
Ninth Circuit, at the Courtroom of said Court, in
the City of San Francisco, and State of California,
within thirty (30) days from the date of this citation,
to wit, within thirty days from February 2d, 1915,
pursuant to writ of error filed in the Clerk's office
of the District Court of the United States for the
Western District of Washington, Southern Division,
wherein Polson Logging Company, a corporation, is
plaintiff in error, and Gustave H. Neumeyer and
Abrham J. Dimond, copartners doing business under
the name and style of Neumeyer & Dimond, are de-
fendants in error, to show cause, if any there be, why
the judgment in said writ of error mentioned [110]
should not be corrected and speedy justice should not
be done to the parties in that behalf.

Witness the Honorable EDWARD DOUGLASS
WHITE, Chief Justice of the Supreme Court of the
United States, this 2d day of February, A. D. 1915.

[Seal] EDWARD E. CUSHMAN,
Judge of the U. S. District Court for the Western
District of Washington, Southern Division.

Service of the within Citation acknowledged this
—— day of February, A. D. 1915, by receipt of copy.

Attorneys for Defendants in Error.

RETURN ON SERVICE OF WRIT.

United States of America,
Western District of Washington,—ss.

I hereby certify and return that I served the annexed Citation on the therein-named Gustave H. Neumeyer et al., defendants in error, by handing to and leaving a true and correct copy thereof with John W. Roberts, as attorney of record for defendants in error, personally, at Seattle, in said District, on the third day of February A. D. 1915.

JOHN M. BOYLE,

U. S. Marshal.

By Edward Williams,

Deputy.

Marshal's fees—\$2.12. [111]

[Endorsed]: In the United States Circuit Court of Appeals, for the Ninth Circuit. Polson Logging Company, a Corporation, Plaintiff in Error, vs. Gustave H. Neumeyer and Abrham J. Dimond, copartners doing business under the name and style of Neumeyer & Dimond, Defendants in Error. Citation. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Feb. 2, 1915. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

*In the United States Circuit Court of Appeals, for
the Ninth Circuit.*

POLSON LOGGING COMPANY, a Corporation,
Plaintiff in Error,

vs.

GUSTAVE H. NEUMEYER and ABRHAM J.
DIMOND, Copartners Doing Business Under
the Name and Style of NEUMEYER & DI-
MOND,

Defendants in Error.

**Order Extending Time [to April 5, 1915, to File
Return to Writ of Error].**

For good cause shown, IT IS NOW ORDERED
that the time within which the return of the Clerk
to the Writ of Error herein may be filed in San Fran-
cisco, California, be and the same hereby is extended
to and including April 5th, 1915.

Dated this 23d day of February, A. D. 1915.

EDWARD E. CUSHMAN,
District Judge. [112]

[Endorsed]: No. ——. In the District Court of
the United States for the Western District of Wash-
ington, Tacoma. Polson Logging Company, Plain-
tiff in Error, vs. Neumeyer & Dimond, Defendants in
Error. Order Extending Time. Filed in the U. S.
District Court, Western Dist. of Washington, South-
ern Division. Feb. 23, 1915. Frank L. Crosby,
Clerk. By F. M. Harshberger, Deputy.

[Endorsed]: No. 2584. United States Circuit Court of Appeals for the Ninth Circuit. Polson Logging Company, a Corporation, Plaintiff in Error, vs. Gustave H. Neumeyer and Abrham J. Dimond, Copartners Doing Business Under the Name and Style of Neumeyer & Dimond, Defendants in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Western District of Washington, Southern Division.

Filed March 19, 1915.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

*In the United States Circuit Court of Appeals, for
the Ninth Circuit.*

POLSON LOGGING COMPANY, a Corporation,
Plaintiff in Error,
vs.

NEUMEYER & DIMOND,
Defendants in Error.

Stipulation [That Certain Exhibits be not Printed].

It is stipulated between the parties hereto that the Defendants in Error's Exhibit No. 9 and Plaintiff in Error's Exhibit No. A-1, be not printed by the clerk of this court.

BRIDGES & BRUENER,
Attorneys for Plaintiff in Error.
JOHN W. ROBERTS,
NELSON R. ANDERSON,
Attorneys for Defendants in Error.

[Endorsed]: No. 2584. United States Circuit Court of Appeals, for the Ninth Circuit. Polson Logging Company, a Corporation, Plaintiff in Error, vs. Neumeyer & Dimond, Defendants in Error. Stipulation. Filed April 2, 1915. F. D. Monckton, Clerk.

[Certificate of Clerk U. S. District Court to Original Exhibits.]

OFFICE OF THE CLERK

**UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF WASHINGTON,
TACOMA.**

United States of America,
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States District Court for the Western District of Washington, do hereby certify the enclosed books, papers, documents, etc., marked Plaintiff's Exhibits 1 to 14, inclusive, to be the original exhibits introduced by plaintiffs, and filed in the said court and cause, and those marked Defendant's Exhibits "A," "A-1," "C," "D," "E," "F," "G," "H," "I" and "J," inclusive, to be the original exhibits introduced by defendant in said court and cause, wherein Gustave H. Neumeyer, Abraham J. Dimond and William E. Neumeyer, copartners as Neumeyer & Dimond, are plaintiffs, and Polson Logging Company, a corporation, is defendant.

Attest my official signature and the seal of this Court at Tacoma, this 16th day of March, A. D. 1915.

[Seal]

FRANK L. CROSBY,

Clerk.

By E. C. Ellington,
Deputy Clerk.

[Endorsed:] 10 Filings Deft. Polson L. Co. 14 Filings Plff. Neumeyer et al. Recd. and Filed Mch. 18, 1915. Dv. 2.

No. 2584. United States Circuit Court of Appeals for the Ninth Circuit. Filed Mar. 19, 1915. F. D. Monckton, Clerk.

[Plaintiff's Exhibit No. 1—Order.]

No. 2012.

Sept. 11th, 1912.

NEUMEYER & DIMOND, New York.

Enter our order for the following:

When Ship Soon as possible.

Ship to Polson Logging Company,

Hoquiam, Wash.

Send bill to Same.

3 bars $1\frac{1}{2}$ "x $2\frac{1}{2}$ " Swivel steel.

2 bars each 2" Rd— $1\frac{3}{8}$ " Rd Clevis steel.

1 " $2\frac{1}{4}$ " Round Swivel Eye steel.

7 " $1\frac{1}{4}$ x $4\frac{1}{2}$ " Choker Hook "

2 bars each $1\frac{1}{4}$ " Rd— $2\frac{1}{2}$ " Rd Block Hook Steel,

2 " $2\frac{1}{4}$ " Round Line " "

2 " $5/16$ "x14" Block Side steel.

2 " $2\frac{3}{4}$ " \square Sledge steel.

2 " " 2" Rd— $2\frac{1}{2}$ " Rd— $1\frac{13}{16}$ " Rd Piston Rod steel.

1 " $1\frac{1}{4}$ " Round Valve Rod steel.

1 " $7/16$ "x $3\frac{1}{2}$ " Locomotive Spring steel.

25 " 1"x2" Dog Hook steel.

1 " $5/8$ " Oct. 2 bars $3/4$ " Oct Cold chisel.

2 " " 2" \square $1\frac{1}{2}$ " \square $1\frac{3}{8}$ " \square $1\frac{1}{4}$ " \square Track & Bull chisel.

- 1 “ 3" □ Splitting Wedge steel.
- 12 “ 1"x3" Falling & Bucking wedge.
- 12 “ “ 7/8 Rd—1" Rd—1 1/8" Rd—1 1/4" Rd Cold
 sheet.
- 50 “ 3/4" Round cold sheet.
- 2 “ 1" “ Roller Bearing steel.
- 250 ft. 1 1/4"x6" Draw Head steel.
- bars 20 ft long cut in two @12 1/2¢ lb.
- 8 ft each 3" □—4" □ Die steel (Ann.) 17¢ lb.

F. O. B. Hoquiam, Wash.

Polson Lg Co Order # 653.

as per copy left with us of this order.

Terms, 2% 10 days, 30 days net.

Signed POLSON LOGGING CO.

J. C. SHAW.

[Printed in margin:] This order is taken subject to delay in delivery caused by strikes, differences with workmen, serious fires, accidents to machinery, or other causes unavoidable or beyond our control.

[Endorsed]: Plts. Ident. No. I. No. 1507. United States District Court, Western District of Washington. Neumeyer & Dimond vs. Polson Logging Co. Plaintiff's Exhibit No. 1.

No. 2584. U. S. Circuit Court of Appeals for the Ninth Circuit. Plffs. Ex. No. 1. Recd. and Filed Mch, 18, 1915. F. D. Monckton, Clerk.

Plaintiff's Exhibit No. 2—Day-Letter.]

[Written on Blank of Western Union Telegraph
Company.]

152CH ZU 29 BLUE BLUE

Hoquiam Wn Feb. 18th-13

Neumeyer and Diamond,

82-92 Beaver St., New York.

Just received invoice for steel Unable to use
same Must be some mistake as no such order placed
in our office Have you not sent invoice to wrong
parties.

POLSON LOGGING CO.

330PM

Received

Feb 18 1913

Answered

[Endorsed]: Plts. Ident 2. No. 1507. United
States District Court, Western District of Washing-
ton. Neumeyer & Dimond vs. Polson Logging Co.
Plaintiff's Exhibit No. 2.

No. 2584. U. S. Circuit Court of Appeals for the
Ninth Circuit. Plaintiff's Exhibit 2. Received and
filed Mch. 18, 1915. F. D. Monckton, Clerk.

[Plaintiff's Exhibit No. 3—Night Letter.]

[Written on Blank of Western Union Telegraph
Company.]

699 CH 50 NL

Z

Hoquiam WN 24

Bumeyer and Dimond

82 92 Beaver St New York

The standing of our firm cuts no figure in this transaction We have no record of ever buying a dollars worth of goods from your firm and no record of placing any order with your firm Mr Shaw positively denies giving your firm any such order Will not accept shipment

POLSON LOGGING CO

1258 AM

Feb 25

Received

59

Feb 25 1913

Answered

[Endorsed]: Plts. Ident. 3. No. 1507. United States District Court, Western District of Washington. Neumeyer & Dimond vs. Polson Logging Co. Plaintiff's Exhibit No. 3.

No. 2584. U. S. Circuit Court of Appeals for the Ninth Circuit. Plaintiff's Exhibit 3. Received and filed Mch. 18, 1915. F. D. Monckton, Clerk.

[Plaintiff's Exhibit No. 4—Letter.]

[Letter-head of Polson Logging Company.]

Hoquiam, Wash., March 22-1913.

Neumeyer & Dimond,

82 Beaver St.,

New York City.

Gentlemen:

Your favor of the 17th inst., to hand. As stated in our former letters and telegrams to you there is absolutely no record that we can find in our office of an order our firm has given to your firm, and our Mr. Shaw denies any knowledge of giving your solicitor any order whatever. We will not accept shipment.

Yours very truly,

POLSON LOGGING CO.

ALEX POLSON, Pres.

Received

Mar. 29, 1913

Answered 3/31

to Mr. Shaw

[Endorsed]: Plts. Iden. 4. No. 1507. United States District Court, Western District of Washington. Neumeyer & Dimond vs. Polson Logging Co. Plaintiff's Exhibit No. 4.

No. 2584. U. S. Circuit Court of Appeals for the Ninth Circuit. Plaintiff's Exhibit 4. Received and filed Meh. 18, 1915. F. D. Monekton, Clerk.

[Plaintiff's Exhibit No. 5—Letter.]

[Letter-head of Polson Logging Company.]

Hoquiam, Wash., May 22, 1913.

Messrs. Neumeyer & Dimond,

New York, N. Y.

Gentlemen:

Your letter of May 17th, with enclosed copy of letter from the Northern Pacific Ry. Co., to hand. You have our previous letters containing a denial that we ever placed an order with your company for any steel of any kind or description, and will not be responsible for the steel in any shape, manner or form.

Yours very truly,

POLSON LOGGING COMPANY,

By ALEX POLSON,

AP-A.

President.

Received

May 29 1913

Answered 6/2

[Endorsed]: Plts. Ident. 5. No. 1507. United States District Court, Western District of Washington. Neumeyer & Dimond vs. Polson Logging Co. Plaintiff's Exhibit No. 5.

No. 2584. U. S. Circuit Court of Appeals for the Ninth Circuit. Plaintiff's Exhibit 5. Received and filed Mch. 18, 1915. F. D. Monckton, Clerk.

[Plaintiff's Exhibit No. 6—Letter.]

[Letter-head of Neumeyer & Dimond.]

New York, U. S. A., March 1st, 1913.

Polson Logging Company,
Hoquiam, Wash.

Gentlemen:—

Wish to refer you to several telegrams that have been interchanged in reference to Order #2012, your number 653.

We have taken this matter up with our representative, who has sold you this material and received reply from him to-day, in which he advised that he has sold this bill to Mr. Shaw and on account of the numerous items that order contained he has pasted copy of order left with him in your order book and has given our representative your order #653.

The date on which order has been taken was September 26th, and was signed by Polson Logging Co.,

Per J. C. Shaw

and as you state in your telegram that Mr. J. C. Shaw positively denies placing this order we will ask him to refresh his memory and the fact that he have signed order on hand with his signature which we are sure he cannot deny.

Steel has been shipped February 6th and advise that you accept same as we have carried out contract made between Mr. Shaw and our representative.

Respectfully yours,
NEUMEYER & DIMOND,

AJD/GS

A. J. DIMON

[Endorsed]: Plts. Ident. 6. No. 1507. United States District Court, Western District of Washington. Neumeyer & Dimond vs. Polson Logging Co. Plaintiff's Exhibit No. 6.

No. 2584. U. S. Circuit Court of Appeals for the Ninth Circuit. Plaintiff's Exhibit 6. Received and filed Mch. 18, 1915. F. D. Monckton, Clerk.

[Plaintiff's Exhibit No. 7—Telegram.]

[Written on Blank of Western Union Telegraph Company.]

R77CH V& 23

Hoquiam Wn Feb 19 1913

Neumeyer and Diamond

82, 92 Beaver St New York

No record of order in office You must prove that order is not a forgery or obtained by fraud we will not accept

POLSON LOGGING CO.

818PM

Feb. 17 1913

Received

Feb. 20 1913

Answered 3/29

[Endorsed]: Plts. Ident. 7. No. 1507. United States District Court, Western District of Washington. Neumeyer & Dimond vs. Polson Logging Co. Plaintiff's Exhibit No. 7.

No. 2548. U. S. Circuit Court of Appeals for the Ninth Circuit. Plaintiff's Exhibit 7. Received and filed Mch. 18, 1915. F. D. Monckton, Clerk.

[Plaintiff's Exhibit No. 8—Telegram.]

[Written on Blank of Western Union Telegraph
Company.]

Received at 6 EA B 14

FX—New York NY Feb 19-13.

Polson Logging Co,
Hoquiam, Wn.

Order placed September eleventh Signed by company Per J. C. Shaw. Must accept shipment.

NEUMEYER AND DIAMOND.

1155 AM

When answering this message, phone "Western Union" (No phone number necessary) "Central" will do the rest.

[Endorsed] Plts. Ident. 8. No. 1507. United States District Court, Western District of Washington. Neumeyer & Dimond vs. Polson Logging Co. Plaintiff's Exhibit No. 8.

No. 2584. U. S. Circuit Court of Appeals for the Ninth Circuit. Plaintiff's Exhibit 8. Received and filed Mch. 18, 1915. F. D. Monckton, Clerk.

[Plaintiff's Exhibit No. 10—Day-Letter.]

[Written on Blank of Western Union Telegraph
Company.]

February 21st, 1913.

To Polson Logging Co.,
Hoquiam, Washington.

Using the term fraud is very unbusinesslike for a firm of your standing we cannot be responsible if there is any mistake in your office records if you had asked Mr. Shaw about this order it would have saved any fraud accusations on your part you must accept shipment.

NEUMEYER & DIMOND

[Endorsed]: Plts. Ident. 10. No. 1507. United States District Court, Western District of Washington. Neumeyer & Dimond vs. Polson Logging Co. Plaintiff's Exhibit No. 10.

No. 2584. U. S. Circuit Court of Appeals for the Ninth Circuit. Plaintiff's Exhibit 10. Received and Filed Mch. 18, 1915. F. D. Monckton, Clerk.

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in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public, or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership, and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

Sec. 5. Property not removed by the party entitled to receive it within forty-eight hours (exclusive of legal holidays) after notice of its arrival has been duly sent or given may be kept in car, depot, or place of delivery of the carrier, or warehouse, subject to a reasonable charge for storage and to carrier's responsibility as warehouseman only, or may be, at the option of the carrier, removed to and stored in a public or licensed warehouse at the cost of the owner and there held at the owner's risk and without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

Item, 2. In passing this bill of lading, the company agrees to transport only over the sea from the month an attachment provided by law acts and the cargo will remain in the custody of the owner beyond its own line.

Properly destined to or taken from a station, wharf, or landing at which there is no regularly appointed agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and when received from or delivered on private or other sidings, wharves, or landings shall be at owner's risk until the cars are attached to and after they are detached from trains.

Sec. 6. No carrier will carry or be liable in any way for documents, specie, or for any articles of extraordinary value not specifically rated in the published classification or tariffs, unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

Sec. 7. Every party, whether principal or agent, shipping perils or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense and disposed of without compensation.

Sec. 8. The owner or consignee shall pay the freight and all the lawful charges accruing on said property, and, if required, shall pay the same before delivery. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the actual charges must be paid upon the articles actually shipped.

Sec. 9. Except in case of diversion from rail to water route, which is provided for in section 3 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the limitations, limitations, and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with such statutes or this section, and subject also to the condition that no carrier or party in possession shall be liable for any loss or damage resulting from the perils of the lakes, sea, or other waters; or from explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery, or appurtenances; or from collision, stranding, or other accidents of navigation, or from profligation of the voyage. And any vessel carrying any or all of the property herein described shall have the liberty to call at intermediate ports, to tow and be towed, and to use vessels in distress, and to deviate for the purpose of saving life or property.

The term "water carriage" in this section shall not be construed as including lightering across rivers or in lake or other harbors, and the liability for such lightering shall be governed by the other sections of this instrument.

Sec. 10. Any alteration, addition or erasure in this bill of lading which shall be made without an indorsement thereof hereon, signed by the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

Orders for 100,000 copies of "The Book of the Month" are being sent to the printer at the rate of 10,000 copies per month. The first 10,000 copies will be delivered by the first of the month. The second 10,000 copies will be delivered by the first of the month. The third 10,000 copies will be delivered by the first of the month. The fourth 10,000 copies will be delivered by the first of the month. The fifth 10,000 copies will be delivered by the first of the month. The sixth 10,000 copies will be delivered by the first of the month. The seventh 10,000 copies will be delivered by the first of the month. The eighth 10,000 copies will be delivered by the first of the month. The ninth 10,000 copies will be delivered by the first of the month. The tenth 10,000 copies will be delivered by the first of the month.

2. The member or party shall not be entitled to any of the benefits or advantages of membership in any of the organizations listed herein, and shall not be entitled to any of the benefits or advantages of membership in any of the organizations listed herein, and shall not be entitled to any of the benefits or advantages of membership in any of the organizations listed herein.

...and
to be
and risk.
Forward-
delays

Case No. 7507

UNITED STATES DISTRICT COURT

Western District of Washington

Memorandum

Is

Polson & Co.

11
ON THE 11th OF NOVEMBER 1911

FRANCIS & TAYLOR NO. 11

[Plaintiff's Exhibit No. 13—Telegram.]

[Written on Blank of Western Union Telegraph
Company.]

27PO HN 13 COLLECT KL

Plff's Ident. 13.

Hoquiam Wn Sept 26 1914

John Roberts

Federal Court Tacoma

Steel arrived and delivered to Hoquiam Livery
and Transfer Company May fourteenth

T D SHARP

1102A

[Endorsed]: No. 1507. United States District
Court, Western District of Washington. Neumeyer
& Dimond vs. Polson Logging Co. Plaintiff's Ex-
hibit No. 13.

No. 2584. U. S. Circuit Court of Appeals for the
Ninth Circuit. Plaintiff's Exhibit 13. Received
and Filed Mch. 18, 1915. F. D. Monckton, Clerk.

[Plaintiff's Exhibit No. 14—Letter.]

June 13th, 1913.

Polson Logging Company,

Hoquiam, Wash.

Gentlemen:—

Replying to yours of the 6th inst., in which you advise that there are many size of steel that have never been used, in this you are evidently in error as we have been selling steel to the logging camps for many years and the several sizes that have been ordered by you have been used heretofore by the other camps, however, that is immaterial since the sizes have been given by Mr. Shaw and he should know your requirements.

Advise that you accept this shipment from the Railroad Company thereby saving unnecessary storage charges, for which you are responsible, and if there are any sizes that Mr. Shaw has ordered by mistake we are perfectly willing to exchange them for those you will be able to use; our representative will call upon you within the next sixty (60) days and advise that you accept this shipment and matters can be adjusted with him.

Respectfully yours,

NEUMEYER & DIMOND.

AJD/GS

[Endorsed]: No. 1507. United States District Court, Western District of Washington. Neumeyer & Dimond vs. Polson Logging Co. Plaintiff's Exhibit No. 14.

No. 2584. U. S. Circuit Court of Appeals for the Ninth Circuit. Plaintiff's Exhibit 14. Received and Filed Mch. 18, 1915. F. D. Monckton, Clerk.

[Defendant's Exhibit "A"—Freight Bill.]

FREIGHT BILL.

Consignee	Station	Date	Freight Bill No
Polson Logging Co	Hoquiam	3/11/13	433

Destination and Route, if for Beyond Issuing Station

To NORTHERN PACIFIC RAILWAY COMPANY, Dr., for charges on articles transported.

Billing Station and Route	Way-Bill No.	Date	Car Initial and Number
Seattle	4134	3/8/13	EJE 60036

Shipper and Original Point of Shipment	Connecting Line Reference	Original Car
Neumayer & Diamond		

Number of Packages, Articles and Marks	Weight	Rate	Freight	Advances
35 Bdl 188 Bar Steel				

191 Bar Steel	28265	12	33 90
---------------	-------	----	-------

Refused a/c not ordered.

OK 12/9

Total to Collect 33 90

Received payment 191..

..... Agent.

Per Cashier.

F C A 52817

All carloads shall be subject to a storage or demurrage charge if not removed within 48 hours.

[Endorsed]: No. 1507. United States District Court, Western District of Washington. Neumeyer & Dimond vs. Polson Logging Co. Defendants' Exhibit A.

No. 2584. U. S. Circuit Court of Appeals for the Ninth Circuit. Defendants' Exhibit A. Received and filed Mch. 18, 1915. F. D. Monckton, Clerk.

[Defendants' Exhibit "C"—Statement.]

3 Bars. $1\frac{1}{2} + 2\frac{1}{2}$ Swivel Steel Weight.

972 Lbs.

1 Bar	"	L. 13' $\frac{3}{4}$ "	W. 168#
1 "	"	" 13' $1\frac{3}{4}$ "	" 170#
1 "	"	" 13' $\frac{3}{4}$ "	" 170#
1 "	"	" 13' $1\frac{1}{2}$ "	" 167#
1 "	"	" 12' $7\frac{1}{2}$ "	" 161#
1 "	"	" 12' 3"	" 147#

6 Bars		L. 77' $2\frac{1}{4}$ "	983#
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2 Bars. 2" Round Clevis Steel Weight.

516#

1 Bar	"	L. 12' $2\frac{1}{2}$ "	W. 131#
1 "	"	" 12' 3"	" 131#
1 "	"	" 12' $2\frac{1}{2}$ "	" 132#
1 "	"	" 11' $8\frac{1}{2}$ "	" 127#

4 Bars		L. 48' $4\frac{1}{2}$ "	" 521#
--------	--	-------------------------	--------

2 Bars. $1\frac{3}{8}$ Round Clevis Steel Weight

290#

1 Bar	"	L. 14' 4"	" 75#
1 "	"	" 14' 2"	" 74#
1 "	"	" 14' 5"	" 75#
1 "	"	" 14' $1\frac{1}{2}$ "	" 72#

4 Bars	"	L. 57' $1\frac{1}{2}$ "	W. 296#
--------	---	-------------------------	---------

1 Bar $2\frac{1}{4}$ " Round Swivel Eye Steel. Weight.

328#

1 " " L. 12' 3" W. 166#

1 " " " 12' $2\frac{1}{2}$ " " 166#

2 " " " 24' $5\frac{1}{2}$ " " 332#

7 Bars $1\frac{1}{4}\times 4\frac{1}{2}$ Chocker Hook teel. Weight

3135#

1 Bar " " 12' $10\frac{3}{4}$ " " 252#

1 " " " 12' 7" " 241#

2 Bars " " 25' $5\frac{3}{4}$ " " 493#

2 Bars $1\frac{1}{4}$ " Round Block Hook Steel Weight.

233#

1 Bar " " 12' $8\frac{1}{2}$ " " 53#

1 " " " 14' 6" " 66#

1 " " " 13' 7" " 57#

1 " " " 13' 2" " 55#

4 Bars " L. 53' $11\frac{1}{2}$ " W. 231#

2 Bars $2\frac{1}{2}$ " Round Block Hook Steel. Weight.

798#

1 Bar " L. 11' 4" W. 191#

1 " " " 11' $4\frac{1}{2}$ " " 192#

1 " " " 11' 9" " 200#

1 " " " 12' $8\frac{3}{4}$ " " 215#

4 Bars " L. 47' $2\frac{1}{4}$ " W. 798#

2 Bars $2\frac{1}{4}$ " Round Line Hook Steel Weight

691#

1 Bar " L. 13' 1" W. 178#

1 " " " 12' $11\frac{1}{2}$ " " 175#

1 " " " 12' 3" " 167#

1 " " " 12' $11\frac{1}{2}$ " " 177#

4 Bars L. 51' 3" W. 697#

2 Bars $5/16 \times 14$ Block Side Steel Weight

650#

1 Bar " L. 11' $1\frac{1}{4}$ " W. 170#

1 " " L. 11' $1\frac{1}{4}$ " " 171#

1 " " L. 11' $1\frac{1}{4}$ " " 170#

1 " " L. 10' 1" " 151#

4 Bars " L. 43' $4\frac{3}{4}$ " W. 662#

2 Bars $2\frac{3}{4}$ " Sledge Steel Weight

1165

1 " " L. 11' 2" W. 293#

1 " " " 11' 1" " 290#

1 " " " 11' 2" " 295#

1 " " " 11' $1\frac{1}{2}$ " " 295#

4 Bars " L. 44' $6\frac{1}{2}$ " " 1173#

2 Bars 2" Round Piston Rod Steel Weight

				320#
1 Bar	"	L. 7' 4 1/2"	W. 80#	
1 Bar	"	" 7' 2"	" 81#	
1 Bar	"	" 7' 6 1/2"	" 81#	
1 Bar	"	" 7' 5 1/2"	" 80#	
<hr/>				
4 Bars	"	" 29' 6 1/2"	" 322#	

2 Bars 2 1/2" Round Piston Rod Steel Weight

				742#
1 Bar	"	L. 11' 8 1/4"	W. 197#	
1 "	"	" 11' 1"	" 182#	
1 "	"	" 11' 5 3/4"	" 195#	
1 "	"	" 10' 5 3/4"	" 178#	
<hr/>				
4 Bars	"	L. 44' 8 3/4"	W. 752#	

2 Bars 1 13/16" Round Piston Rod Steel Weight

				471#
1 Bar	"	L. 13' 6 3/4"	W. 120#	
1 "	"	" 13' 4"	" 119#	
1 "	"	" 13' 2 1/4"	" 116#	
1 "	"	" 13' 4 1/2"	" 119#	
<hr/>				
4 Bars	"	L. 53' 5 1/2"	W. 474#	

1 Bar $1\frac{1}{4}$ " Round Valve Rod Steel Weight

107#

1 Bar " L. 11' 7" W. 50#

1 " " " 11' 6" " 50#

2 Bars " L. 23' 1" W. 100#

1 Bar $7/16 \times 3\frac{1}{2}$ " Locomotive Spring Steel Weight

112#

1 Bar " L. 11' 1" W. 57#

1 " " " 10' $11\frac{1}{4}$ " " 57#

2 Bars " L. 22' $1\frac{1}{4}$ " W. 114#

25 Bars 1×2 Dog Hook Steel Weight

3605#

1 Bar " 10' $7\frac{1}{2}$ " W. 75#

1 " " 10' 5" " 74#

1 " " 10' $5\frac{3}{4}$ " " 74#

1 " " 10' $6\frac{1}{2}$ " " 74#

1 " " 10' $7\frac{1}{4}$ " " 74#

1 " " 10' $1\frac{1}{4}$ " " 75#

1 " " 10' 8" " 74#

1 " " 10' $10\frac{1}{4}$ " " 75#

1 " " 10' $8\frac{1}{2}$ " " 75#

1 " " 10' $7\frac{1}{2}$ " " 74#

1 " " 10' $6\frac{1}{2}$ " " 74#

1 " " 10' 8" " 74#

1 " " 10' 6" " 74#

1 " " 10' 8" " 74#

1 " " 10' $6\frac{3}{4}$ " " 74#

1 " " 10' $6\frac{1}{2}$ " " 74#

1	"	"	10' 7"	"	74#
1	"	"	10' 7"	"	74#
1	"	"	10' 8"	"	74#
1	"	"	10' 6 $\frac{1}{4}$ "	"	73#
1	"	"	10' 7 $\frac{1}{2}$ "	"	74#
1	"	"	10' 5"	2	73#
1	"	"	10' 7 $\frac{3}{4}$ "	"	74#
1	"	"	10' 11"	"	75#
1	"	"	10' 8 $\frac{3}{4}$ "	"	74#
1	"	"	10' 8 $\frac{1}{2}$ "	"	73#
1	"	"	10' 9 $\frac{1}{4}$ "	"	75#
1	"	"	10' 9"	"	74#
1	"	"	10' 7"	"	72#
1	"	"	10' 10"	"	73#
1	"	"	10' 8"	"	73#
1	"	"	10' 8 $\frac{1}{4}$ "	"	73#
1	"	"	10' 8 $\frac{1}{2}$ "	"	73#
1	"	"	10' 9"	"	75#
1	"	"	10' 9 $\frac{1}{2}$ "	"	75#
1	"	"	10' 10 $\frac{1}{4}$ "	"	75#
1	"	"	10' 8"	"	74#
1	"	"	10' 5 $\frac{1}{2}$ "	"	71#
1	"	"	10' 10"	"	75#
1	"	"	10' 7 $\frac{3}{4}$ "	"	73#
1	"	"	10' 9"	"	74#
1	"	"	10' 7"	"	71#
1	"	"	10' 6 $\frac{1}{2}$ "	"	73#
1	"	"	10' 7"	"	73#
1	"	"	10' 7 $\frac{1}{2}$ "	"	73#
1	"	"	10' 7"	"	73#
1	"	"	10' 10 $\frac{1}{2}$ "	"	75#

1	“	“	10' 6½"	“	73#
1	“	“	10' 8½"	“	73#
1	“	“	10' 9½"	“	74#

50 Bars “ 532 Ft. 10" W. 3689#

1 Bar of ⅝" Oct. Cold Chisel teal Weight
21#

1 Bar “ 9' 4½" W. 11#

2 Bars of Oct. Cold Chisel Steel ¾" Weight
74#

1 Bar “ 12' 4" W. 31#

1 “ “ 11' 5" “ 17#

1 “ “ 11' 5" “ 17#

1 “ “ 12' 2½" “ 20#

4 Bars “ 47' 4½" “ 75#

2 Bars 2" Square Track Chisel Steel Weight
612#

1 Bar “ 11' 1" W. 153#

1 “ “ 10' 6½" “ 145

1 “ “ 11" 11" “ 170#

1 “ “ 10' 9" “ 149#

4 Bars “ 44' 3½" “ 617#

2 Bars 1½" Square Track Chisel Steel Weight
402#

1 Bar “ 13' 11¼" “ 110#

1 “ “ 12' 2¼" “ 95#

1 “ “ 13' 1¼" “ 102#

1 “ “ 12' 6½" “ 99#

4 Bars “ 51' 9¼" “ 406#

2 Bars 1 $\frac{3}{8}$ " Square Track Chisel Steel Weight

287#

1 Bar	"	11' 6"	"	75#
1 "	"	10' 1 $\frac{1}{2}$ "	"	72#
1 "	"	10' 5 $\frac{1}{2}$ "	"	70#
1 "	"	11' 4"	"	74#

4 Bars " 44' 1" W. 291#

2 Bars 1 $\frac{1}{4}$ " Square Track Chisel Steel Weight

235#

1 Bar	9' 8"	"	9' 8"	"	50#
1 "	9' 2"	"	9' 2"	"	50#
1 "		"	11' 11 $\frac{1}{2}$ "	"	67#
1 "		"	12' 1 $\frac{1}{2}$ "	"	67#

4 Bars " 42' 10" W. 234#

1 Bar 3" Splitting Wedge Steel Weight

730#

1 Bar	"	11' 10"	"	366#
1 "	"	11' 10"	"	365#

2 Bars " 23' 8" " 731#

12 Bars 1x3 F & B Wedge Steel Weight

1 Bar " 94"

12 Bars 1x3 F. & B. Wedge Steel Weight

2300#

1 Bar	"	9' 4"	W.	95#
1 "	"	9' 6 $\frac{1}{2}$ "	"	98#
1 "	"	9' 2 $\frac{1}{2}$ "	"	95#
1 "	"	9' 4 $\frac{1}{4}$ "	"	96#

1	"	"	9'	5 $\frac{3}{4}$ "	"	95 #
1	"	"	9'	5 $\frac{1}{4}$ "	"	95 #
1	"	"	9'	6 $\frac{1}{4}$ "	"	96 #
1	"	"	9'	5 $\frac{1}{4}$ "	"	96 #
1	"	"	9'	1"	"	93 #
1	"	"	9'	7"	"	94 #
1	"	"	9'	9 $\frac{1}{4}$ "	"	98 #
1	"	"	9'	6"	"	95 #
1	"	"	9'	6"	"	95 #
1	"	"	9'	4 $\frac{1}{4}$ "	"	95 #
1	"	"	9'	6 $\frac{3}{4}$ "	"	96 #
1	"	"	12'	2"	"	123 #
1	"	"	9'	8"	"	97 #
1	"	"	9'	5 $\frac{1}{2}$ "	"	95 #
1	"	"	9'	5"	"	94 #
1	"	"	9'	5 $\frac{1}{4}$ "	"	94 #
1	"	"	9'	6"	"	96 #
1	"	"	11'	11 $\frac{1}{2}$ "	"	120 #
1	"	"	8'	4 $\frac{1}{2}$ "	"	85 #
1	"	"	9'	7"	"	96 #

24 Bars " 231 Ft. 2 $\frac{3}{4}$ " " 2332 #

12 Bars $\frac{7}{8}$ " Round Cold Shut Steel Weight

562 #

1 Bar	"	12"	"	+
1 "	"	11'	6 $\frac{1}{2}$ "	+
1 "	"	11'	3 $\frac{1}{2}$ "	+
1 "	"	9'	7 $\frac{1}{2}$ "	+
1 "	"	9'	7 $\frac{3}{4}$ "	+
1 "	"	11'	3 $\frac{1}{2}$ "	+

6 Bars

65 Ft. 4 $\frac{3}{4}$ " W. 139 #

1 Bar $\frac{7}{8}$ " Round Cold Steel

1	"	"	11'	7 $\frac{1}{2}$ "
1	"	"	9'	7 $\frac{1}{2}$ "
1	"	"	9'	5 $\frac{1}{2}$ "
1	"	"	11'	11 $\frac{3}{4}$ "
1	"	"	11'	1"
1	"	"	11'	5"

12 Bars $\frac{7}{8}$ " Round Cold Shut Steel

Weight

562#

1 Bar	"	12')	
1 "	"	11'	6 $\frac{1}{2}$ ")
1 "	"	11'	3 $\frac{1}{2}$ ")
1 "	"	9'	7 $\frac{1}{2}$ ")
1 "	"	9'	7 $\frac{3}{4}$ ")
1 "	"	11'	3 $\frac{1}{2}$ ") W. 139#
1 "	"	11'	7 $\frac{1}{2}$ ")
1 "	"	9'	7 $\frac{1}{2}$ ")
1 "	"	9'	5 $\frac{1}{2}$ ")
1 "	"	11'	11 $\frac{3}{4}$ ")
1 "	"	11'	1")
1 "	"	11'	5") W. 137#
1 "	"	12'	1 $\frac{1}{2}$ ")
1 "	"	12'	1 $\frac{1}{2}$ ")
1 "	"	11'	4 $\frac{1}{2}$ ")
1 "	"	11'	2 $\frac{1}{2}$ ")
1 "	"	11'	2 $\frac{1}{2}$ ")
1 "	"	11'	1 $\frac{1}{2}$ ") W. 145#

1	"	"	11'	7")	
1	"	"	12')	
1	"	"	11'	2")	
1	"	"	11'	9½")	
1	"	"	11'	4")	
1	"	"	11'	5")	W. 146#

24 Bars " 268 Ft. 101½" W. 567#

12 Bars 1" Round Cold Shut Steel Weight

870#

1 Bar	"	10'	7½")	
1	"	"	11'	9")
1	"	"	11'	9")
1	"	"	11'	9¼") W. 125#
1	"	"	12'	3")
1	"	"	12'	10½")
1	"	"	12'	4")
1	"	"	12'	5¼") W. 184#
1	"	"	12'	10")
1	"	"	12'	3")
1	"	"	12'	2")
1	"	"	12'	3 ")
1	"	"	12'	4")
1	"	"	12'	5") W. 180#
1	"	"	12'	10")
1	"	"	12'	2")
1	"	"	12'	4")
1	"	"	12'	11")
1	"	"	12'	11¼") W. 184#
1	"	"	12'	3")
1	"	"	12'	1")
1	"	"	12'	4")

1	"	"	12' 8") W. 145#
1	"	"	12' 3") W. 36#
<hr/>				
24 Bars	"		293' 11 $\frac{3}{4}$ "	W. 854#
12 Bars 1 $\frac{1}{8}$ "			Round Cold Shut Steel	Weight.
				<hr/>
				1110#
1 Bar	"		13' 11 $\frac{1}{2}$ ")
1	"	"	12' 10 $\frac{1}{2}$ ")
1	"	"	14') W. 142#
1	"	"	13' 4 $\frac{3}{4}$ ")
1	"	"	13' 4 $\frac{3}{4}$ ")
1	"	"	13' 3 $\frac{1}{2}$ ") W. 136#
1	"	"	13' 11")
1	"	"	13' 11 $\frac{1}{2}$ ")
1	"	"	14') W. 145#
1	"	"	13' 4 $\frac{1}{2}$ ")
1	"	"	12' 11 $\frac{1}{2}$ ")
1	"	"	13' 2") W. 135#
1	"	"	13' 11 $\frac{1}{2}$ ")
1	"	"	13' 8")
1	"	"	14') W. 143#
1	"	"	13' 1")
1	"	"	14' 0")
1	"	"	14') W. 141#
1	"	"	14')
1	"	"	14')
1	"	"	13' 11 $\frac{1}{2}$ ") W. 143#
1	"	"	14')
1	"	"	13' 2")
1	"	"	14' 0") W. 141#
<hr/>				
24 Bars	"		328 Ft. 1 $\frac{1}{2}$ "	W. 1126#

250 Ft. $11\frac{1}{4} \times 6$ Draw Head Steel.

Weighth.

5985 #

1 Bar	"	9' 8"	W. 245 #
1 "	"	9' 7"	" 243 #
1 "	"	9' $3\frac{1}{2}$ "	" 236 #
1 "	"	9' $7\frac{1}{2}$ "	" 245 #
1 "	"	9' $4\frac{1}{4}$ "	" 238 #
1 "	"	10'	" 255 #
1 "	"	9' $5\frac{1}{2}$ "	" 240 #
1 "	"	9' $6\frac{1}{2}$ "	" 245 #
1 "	"	9' $3\frac{1}{2}$ "	" 235 #
1 "	"	9' $8\frac{1}{4}$ "	" 245 #
1 "	"	9' 6"	" 242 #
1 "	"	9' $3\frac{1}{2}$ "	" 236 #
1 "	"	9' 2"	" 231 #
1 "	"	9' $3\frac{1}{4}$ "	" 237 #
1 "	"	9' $\frac{1}{4}$	" 230 #
1 "	"	9' $3\frac{1}{4}$ "	" 236 #
1 "	"	9' $3\frac{1}{2}$ "	" 239 #
1 "	"	9' $5\frac{1}{2}$ "	" 243 #
1 "	"	9' 9"	" 250 #
1 "	"	9' 7"	" 245 #
1 "	"	9' 8"	" 243 #
1 "	"	9' $10\frac{1}{2}$ "	" 250 #
1 "	"	9' $4\frac{1}{2}$ "	" 238 #
1 "	"	9' $10\frac{1}{4}$ "	" 251 #
1 "	"	9' $2\frac{1}{2}$ "	" 235 #

25 Bars

" 236 Ft. 1"

W. 6032 #

1 Bar 3" Square Die Steel Ann	Weight.
	<hr/>
	257 #
1 " " 8' 3" W. 260 #	
1 Bar 4" Square Die Steel Ann.	.Weight
	<hr/>
	446 #
1 " " 8' 11½ W. 449 #	
50 Bars ¾" Round Cold Shut Steel.	Weight.
	<hr/>
	1620 #
1 Bar " 7' 9¼")	
1 " " 10' 4")	
1 " " 9' 5½")	
1 " " 10' 2½")	
1 " " 10' 4")	
1 " " 11' 2½")	
1 " " 9' 8½")	
1 " " 10' 9½") W. 120 #	
1 " " 11' 10¼")	
1 " " 8' 2")	
1 " " 15' 4")	
1 " " 11' 11")	
1 " " 8' 3¾") W. 85 #	
1 " " 10' 3")	
1 " " 10' 3")	
1 " " 11' 2")	
1 " " 9' 11")	
1 " " 9' 7¾")	
1 " " 9' 10½")	
1 " " 9' 11")	
1 " " 10' 4½") W. 126 #	

1	"	"	10'	11½")	
1	"	"	10'	9")	
1	"	"	10'	1")	
1	"	"	9')	
1	"	"	11'	1")	
1	"	"	9'	4")	
1	"	"	10'	6¼")	
1	"	"	10'	3")	W. 121#
1	"	"	12'	½")	
1	"	"	8'	7¾")	
1	"	"	9'	6")	
1	"	"	12'	5½")	
1	"	"	13'	1½")	
1	"	"	14'	8")	W. 106#
1	"	"	12'	8")	
1	"	"	12'	9½")	
1	"	"	15')	
1	"	"	14'	9")	
1	"	"	15'	1½")	
1	"	"	12'	8½")	
1	"	"	11'	4")	
1	"	"	14'	3½")	W. 164#
1	"	"	9'	11")	
1	"	"	9'	7")	
1	"	"	10'	4")	
1	"	"	10'	1½")	
1	"	"	9'	6")	
1	"	"	10'	2")	
1	"	"	9'	2")	
1	"	"	10'	4")	W. 122#

50 Bars $\frac{3}{4}$ " Round Cold Shut Steel Continued.

1 Bar	"	12'	8 $\frac{1}{2}$ ")	
1 "	"	10'	9 $\frac{1}{2}$ ")	
1 "	"	12'	5")	
1 "	"	12'	9")	
1 "	"	9'	10 $\frac{1}{2}$ ")	
1 "	"	8'	5 $\frac{1}{2}$ ")	
1 "	"	10'	4 $\frac{1}{2}$ ")	
1 "	"	10')	W. 135#
1 "	"	10'	3 $\frac{1}{2}$ ")	
1 "	"	10'	6")	
1 "	"	10'	11")	
1 "	"	10'	2")	
1 "	"	10')	
1 "	"	10'	3")	
1 "	"	10'	1")	
1 "	"	9'	9")	W. 127#
1 "	"	11'	2 $\frac{1}{2}$ ")	
1 "	"	11'	7")	
1 "	"	11'	11")	
1 "	"	12'	3")	
1 "	"	12'	1 $\frac{1}{4}$ ")	
1 "	"	11'	10")	
1 "	"	9'	1 $\frac{1}{2}$ ")	
1 "	"	11'	10")	W. 135#
1 "	"	9'	7 $\frac{1}{2}$ ")	
1 "	"	9'	5")	
1 "	"	10'	5 $\frac{1}{2}$ ")	
1 "	"	11'	3")	
1 "	"	9'	11")	
1 "	"	10'	9")	
1 "	"	10'	10")	
1 "	"	9'	7")	W. 127#

1 "	"	9' 6 $\frac{3}{4}$ ")	
1 "	"	12' 1 $\frac{1}{2}$ ")	
1 "	"	10' 1")	
1 "	"	9' 1")	
1 "	"	10' 2")	
1 "	"	10' 4")	
1 "	"	9' 5 $\frac{1}{2}$ ")	
1 "	"	8' 3")	W. 120#
1 "	"	11' 7"		W. 18#
1 "	"	9' 6 $\frac{1}{2}$ "		" 15#
1 "	"	11' 1 $\frac{1}{2}$ "		" 16#
1 "	"	14' 8 $\frac{1}{2}$ "		" 22#
1 "	"	11' 9"		" 18#
1 "	"	9' 11 $\frac{1}{4}$ "		" 15#
1 "	"	10' 10 $\frac{1}{2}$ "		" 16#
1 "	"	10' 5 $\frac{1}{2}$ "		" 15#
1 "	"	11' 5"		" 17#
<hr/>				
49 Bars		522 Ft. 4 $\frac{3}{4}$ "	"	796#
51 Bars		555 " 11"	"	844#
<hr/>				
100 Bars		1078 " 3 $\frac{3}{4}$ "	"	1640#

12 Bars 11 $\frac{1}{4}$ " Cold Shut Steel

Weight

				1140#
1 Bar	"	11' 4"	W.	50#
1 "	"	11' 11 $\frac{1}{2}$ "	"	49#
1 "	"	11' 21 $\frac{1}{2}$ "	"	49#
1 "	"	11' 51 $\frac{1}{2}$ "	"	49#
1 "	"	11' 21 $\frac{1}{2}$ "	"	50#
1 "	"	11' 8"	"	50#
1 "	"	11' 61 $\frac{1}{2}$ "	"	49#
1 "	"	11' 3"	"	49#
1 "	"	11' 1"	"	47#

[Defendants' Exhibit "D"—Account-Book.]

[Endorsed]: No. 1507 United States District Court, Western District of Washington. Neumeyer & Dimond vs. Polson Logging Company. Defendants' Exhibit D.

No. 2584. U. S. Circuit Court of Appeals for the Ninth Circuit. Defendants' Exhibit D. Received and filed Mch. 18, 1915. F. D. Monekton, Clerk.

$1\frac{1}{2} \times 2\frac{1}{2}$

13 2"
12 $7\frac{1}{2}$
13 $\frac{1}{2}$
13 1
13 1
12 3

Total 77 3"

77 $2\frac{1}{4}$

2" Round

7 6
7 $5\frac{1}{2}$
7 $6\frac{1}{4}$
7 5
12 $2\frac{1}{2}$
12 $2\frac{1}{2}$
11 $8\frac{1}{2}$
12 $2\frac{1}{2}$

Total 78 $2\frac{3}{4}$

77 11"

$1\frac{3}{8}$ Round

14 $4\frac{3}{4}$
14 $1\frac{3}{4}$
14 $1\frac{1}{2}$
14 4

Total 57 - 0"

57 $1\frac{1}{2}$ "

$2\frac{1}{4}$ " Round

12 3
12 $11\frac{1}{4}$
13 $\frac{3}{4}$
12 11
12 3
12 $2\frac{1}{2}$

Total 75 $7\frac{1}{2}$

75 $8\frac{1}{2}$

[illegible]

$2\frac{1}{2}$ Round

12	$8\frac{1}{2}$
11	$5\frac{1}{2}$
10	6
11	1
11	$8\frac{3}{4}$
11	$4\frac{1}{2}$
11	$8\frac{1}{2}$
11	$3\frac{1}{4}$

Total 91 10" 91 11

 $5/16 \times 14$

10	1
11	$11\frac{1}{2}$
11	2
11	$11\frac{1}{2}$

Total 43 6" 43 $4\frac{3}{4}$

 $2\frac{3}{4}$ Square

11	2
11	2
11	0
11	2

Total 44 6" 44 $6\frac{1}{2}$

1 $13/16$ Round

13	5	
13	$3\frac{3}{4}$	
13	$4\frac{3}{4}$	$1\frac{3}{4}$
13	$2\frac{1}{4}$	

Total 53 3" 53 $5\frac{1}{2}$

 $7/16 \times 3\frac{1}{2}$

11	$11\frac{1}{2}$
10	$11\frac{1}{2}$

Total 22 $1\frac{1}{2}$ " 22 $\frac{1}{4}$

1x2

10	7	10	71 $\frac{1}{2}$
10	9	10	101 $\frac{1}{2}$
10	81 $\frac{1}{4}$	10	63 $\frac{3}{4}$
10	91 $\frac{1}{2}$	10	71 $\frac{1}{4}$
10	71 $\frac{1}{2}$	10	61 $\frac{1}{4}$
10	81 $\frac{1}{2}$	10	81 $\frac{1}{4}$
10	83 $\frac{3}{4}$	10	91 $\frac{1}{4}$
10	83 $\frac{3}{4}$	10	61 $\frac{1}{2}$
10	81 $\frac{1}{4}$	10	8
10	81 $\frac{1}{2}$	10	5
10	61 $\frac{1}{2}$	10	53 $\frac{3}{4}$
10	81 $\frac{1}{4}$	10	93 $\frac{3}{4}$
10	73 $\frac{3}{4}$	10	83 $\frac{3}{4}$
10	7	10	71 $\frac{1}{2}$
10	11	10	101 $\frac{1}{2}$
10	91 $\frac{1}{4}$	10	7
10	8	10	71 $\frac{1}{2}$
10	81 $\frac{1}{2}$	10	101 $\frac{1}{4}$
10	7	10	6
10	5	10	63 $\frac{3}{4}$
10	101 $\frac{1}{2}$	10	61 $\frac{1}{2}$
10	8	10	101 $\frac{1}{4}$
10	73 $\frac{3}{4}$	10	61 $\frac{1}{2}$
10	81 $\frac{1}{4}$	10	61 $\frac{1}{2}$
10	8	10	71 $\frac{1}{4}$
Total two Columns			

250

532 ft. 33 $\frac{3}{4}$ "

250

5/8 Oct

532 10"

9 5

9 41 $\frac{1}{2}$

	$\frac{3}{4}$ Oct
12	$2\frac{1}{2}$
12	4
11	5

Total	35	$11\frac{1}{2}$	47	$4\frac{1}{2}$
-------	----	-----------------	----	----------------

	2" Square
11	$10\frac{1}{2}$
10	$9\frac{1}{4}$
11	1
10	$6\frac{3}{4}$

Total	44	$3\frac{1}{2}$ "	44	$3\frac{1}{2}$
-------	----	------------------	----	----------------

	$1\frac{1}{2}$ " Square
12	3
13	$\frac{3}{4}$
13	$11\frac{1}{2}$
12	$6\frac{3}{4}$

Total	51	10"	51	$9\frac{1}{4}$
-------	----	-----	----	----------------

	$1\frac{3}{8}$ Square
11	4
10	$5\frac{1}{2}$
10	$9\frac{1}{2}$
11	$6\frac{1}{4}$

Total	44	$1\frac{1}{4}$	44	1
-------	----	----------------	----	---

	$1\frac{1}{4}$ Square
9	2
9	8
12	0
12	0

Total	42	10	42	10
-------	----	----	----	----

3" Square

11 $9\frac{1}{2}$ 11 $9\frac{1}{2}$

8 3

22

31" 10"

31 11

1x3

9 $4\frac{3}{4}$ 9 $4\frac{1}{4}$ 8 $4\frac{1}{4}$ 9 $9\frac{1}{4}$

9 6

9 $6\frac{3}{4}$ 9 $5\frac{3}{4}$

9 7

11 $11\frac{1}{4}$ 9 $5\frac{3}{4}$

9 4

9 $4\frac{1}{2}$

9 8

9 $5\frac{1}{4}$

9 6

12 2

9 $6\frac{1}{4}$ 9 $6\frac{1}{2}$ 9 $5\frac{1}{4}$

9 7

9 $2\frac{1}{2}$

9 1

9 $5\frac{3}{4}$

9 5

231 ft 2"231 $2\frac{3}{4}$

$\frac{7}{8}$ Round

11	$11\frac{3}{4}$
11	$6\frac{1}{2}$
11	$11\frac{1}{2}$
11	$4\frac{3}{4}$
11	$4\frac{1}{4}$
11	2
11	$2\frac{1}{4}$
12	$1\frac{1}{2}$
11	$3\frac{1}{4}$
11	2
11	$3\frac{1}{2}$
12	0
11	$1\frac{1}{2}$
11	$7\frac{1}{2}$
11	7
11	$9\frac{1}{2}$
12	0
11	5
11	1
11	4
9	$7\frac{1}{2}$
9	$5\frac{1}{2}$
9	$7\frac{1}{2}$
9	$7\frac{3}{4}$

268 ft 8"

268 $10\frac{1}{2}$

1" Round

12	$10\frac{3}{4}$
12	$3\frac{3}{4}$
12	$11\frac{1}{2}$
12	10
12	2
12	$4\frac{3}{4}$
12	$5\frac{1}{4}$
13	3
12	$3\frac{1}{2}$
12	4
12	2
13	1
11	$9\frac{1}{4}$
10	$7\frac{1}{2}$
12	$8\frac{1}{2}$
12	$10\frac{1}{4}$
12	8
12	$2\frac{1}{2}$
12	3
12	$4\frac{1}{2}$
12	$10\frac{1}{2}$
11	9
12	3
11	$9\frac{1}{4}$
12	1
12	4
12	$2\frac{3}{4}$

 333 $1\frac{1}{2}$ "
333 $3\frac{3}{4}$ "

$11\frac{1}{8}$ Round

14 0

14 0

13 $11\frac{1}{2}$

13 $11\frac{1}{2}$

14 0

13 $10\frac{3}{4}$

13 $11\frac{3}{4}$

13 8

13 $11\frac{1}{2}$

13 $2\frac{1}{4}$

14 0

13 $11\frac{3}{4}$

14 0

13 $1\frac{3}{4}$

12 $11\frac{1}{4}$

13 $4\frac{1}{4}$

13 $3\frac{1}{2}$

13 $4\frac{3}{4}$

12 $10\frac{3}{4}$

14 0

13 $4\frac{3}{4}$

13 1

13 $11\frac{3}{4}$

13 $11\frac{1}{2}$

328 ft. $1\frac{1}{4}$ "

328 $11\frac{1}{2}$

		$\frac{3}{4}$ Rd				
10	$11\frac{1}{4}$	12—1	7	$9\frac{1}{2}$	11	7
10	4	9— $5\frac{3}{4}$	9	$4\frac{1}{4}$	11	10
10	$4\frac{1}{2}$	10— $5\frac{1}{2}$	9	$5\frac{1}{2}$	10	2
10	1	12—3	11	$2\frac{1}{2}$	10	$4\frac{1}{2}$
8	4	10— $9\frac{1}{2}$	10	$2\frac{1}{4}$	10	$3\frac{1}{2}$
9	11	9— $6\frac{1}{2}$	9	$11\frac{1}{4}$	11	7
9	$1\frac{1}{2}$	10— $11\frac{1}{2}$	9	6	10	$10\frac{1}{2}$
11	10	13—2	11	$1\frac{1}{2}$	10	4
11	9	14—8	9	$11\frac{1}{2}$	10	$3\frac{1}{2}$
12	$1\frac{1}{2}$	11 2	9	1	14	$3\frac{3}{4}$
10	$6\frac{1}{2}$	14 8	9	11	9	11
11	11		11	10	9	7
9	10		9	$11\frac{1}{2}$	10	$11\frac{1}{2}$
9	8		12	8	11	3
10	3		10	$9\frac{3}{4}$	11	2
9	$1\frac{1}{2}$		11	11	14	9
12	9		9	$6\frac{3}{4}$	12	5
10	3		9	$10\frac{1}{4}$	10	$9\frac{1}{4}$
9	4		10	11	10	$5\frac{1}{2}$
12	$1\frac{1}{4}$		12	$8\frac{1}{2}$	10	$5\frac{1}{4}$
10	9		14	$11\frac{3}{4}$	9	9
11	4		15	$11\frac{1}{2}$	12	$9\frac{1}{4}$
10	2		12	5	8	$5\frac{1}{2}$
10	$4\frac{1}{2}$		10	3	8	$7\frac{1}{2}$
9	2		15	$4\frac{3}{4}$	11	$2\frac{1}{4}$
9	5		12	$8\frac{1}{2}$	9	$4\frac{1}{2}$
10	1		10	$10\frac{1}{2}$	9	$10\frac{1}{2}$
8	2		11	$3\frac{1}{2}$	9	7
9	$7\frac{1}{4}$		10	$11\frac{1}{2}$	9	11
9	$8\frac{1}{2}$		9	$10\frac{1}{4}$	8	3

Total
 1087 ft 7"
 1078— $3\frac{3}{4}$

$17\frac{7}{8}$ Oct
 $11-10''$
 $11\frac{1}{4} \times 6$
 9 9
 9 $6\frac{1}{2}$
 9 5
 9 8
 9 7
 9 $7\frac{1}{2}$
 9 10
 9 3
 9 $3\frac{1}{2}$
 9 2
 9 6
 9 $10\frac{3}{4}$
 9 $1\frac{1}{2}$
 9 $3\frac{1}{4}$
 9 $3\frac{1}{2}$
 9 $6\frac{1}{2}$
 9 $3\frac{1}{2}$
 9 $3\frac{1}{4}$
 9 7
 9 $8\frac{1}{2}$
 9 $11\frac{1}{2}$
 9 7
 9 $4\frac{1}{2}$
 9 $5\frac{1}{2}$
 9 $3\frac{1}{2}$

Total $237' 21\frac{1}{4}''$
 $4''$ Sq
 8 $11\frac{1}{2}$

236 1''

8 $11\frac{1}{2}$
 GEO. J. FLURSHUTZ,
 715 Maple St.,
 Hoquiam, Wash.

~~2ft.~~ ~~2" Sq.~~~~11-10 $\frac{1}{2}$~~ ~~10-9 $\frac{1}{4}$~~ ~~2 $\frac{3}{4}$ Sq.~~~~11-0~~~~11-2~~~~3" Sq.~~~~11-9 $\frac{1}{2}$~~ ~~8-3~~~~11-9 $\frac{1}{2}$~~ ~~4" Sq.~~~~8 ft. 1 $\frac{1}{2}$ "~~~~5/16x14~~~~10-1~~~~11-1 $\frac{1}{2}$~~ ~~11-2~~~~11-1 $\frac{1}{2}$~~ ~~25 Bars 1 $\frac{1}{4}$ x6~~~~9-9~~~~9-6 $\frac{1}{2}$~~ ~~9-5~~~~9-8~~~~9-7~~~~9-7 $\frac{1}{2}$~~ ~~9-10~~~~9-3~~~~9-3 $\frac{1}{2}$~~ ~~9-2~~~~9-6~~

$$\cancel{9-10\frac{3}{4}}$$

$$\cancel{9-\frac{1}{2}}$$

$$\cancel{9-3\frac{1}{4}}$$

$$\cancel{9-3\frac{1}{2}}$$

$$\cancel{9-6\frac{1}{2}}$$

$$\cancel{9-3\frac{1}{2}}$$

$$\cancel{9-3\frac{1}{4}}$$

$$\cancel{9-7}$$

$$\cancel{9-8\frac{1}{2}}$$

$$\cancel{9-11\frac{1}{2}}$$

$$\cancel{9-7}$$

$$\cancel{9-4\frac{1}{2}}$$

$$\cancel{9-5\frac{1}{2}}$$

$$\cancel{9-3\frac{1}{2}}$$

$$2 \text{ Bars } 2\frac{3}{4} \text{ Sq.}$$

$$\cancel{11-2}$$

$$\cancel{11-2}$$

$$\cancel{11\frac{1}{4}-4\frac{1}{2}}$$

$$\cancel{12-11}$$

$$\cancel{12-7}$$

[Defendants' Exhibit "E"—Invoice (Copy).]

COPY.

NEUMEYER & DIMOND,

NEW YORK, U. S. A.

February 6th, 1913.

Sold to Polson Logging Co.,
Hoquiam, Wash.

Our Number	Your Number	Quantity	Size	Description	Weight	Approx. wgt. per foot.	Approx. length	Approx. length per bar.
2012	W-653	3	Bars 1½"x2½"	Swivel Steel.	972 lbs.	12.80	76 ft.	25 ft.
		2	" 2" Rd.	Clevis "	516 "	10.69	48 "	24 "
		2	" 1¾" Rd	" "	290 "	5.052	58 "	29 "
		1	" 2¼" "	Swivel Eye "	328 "	13.52	24 "	24 "
		7	" 1¼"x4½"	Choker Hook Steel.	3135 "	3.04	136 "	19 "
		2	" 1¼" Rd	Block "	233 "	4.175	56 "	28 "
		2	" 2½" "	" "	798 "	16.70	48 "	24 "
		2	" 2¼" "	Line "	691 "	13.52	51 "	52½ "
		2	" 5/16"x14"	Block (ends painted white)	650 "	14.78	44 "	22 "
		2	" 2¾" Sq.	Sledge Side Steel.	1165 "	25.73	45 "	22½ "
		2	" 2" Rd.	Piston Rod "	320 "	10.69	30 "	15 "
		2	" 2½" "	(ends painted white)	742 "	16.70	44 "	21 "
		2	" 1 13/16" Rd.	Piston Rod.	471 "	8.18	58 "	29 "
		1	" 1¼" Rd.	Valve Rod Steel	107 "	4.175	26 "	26 "
		1	" 7/16"x3½"	Locomotive Spring Steel.	112 "	5.175	21½ "	21½ "
		25	" 1"x2"	Dog Hook Steel.	3605 "	6.826	528 "	21 "
		1	" 5"	Oct. Cold Chisel "	21 "	1.10	20 "	20 "
		2	" ¾" "	" "	74 "	1.58	48 "	24 "
		2	" 2" Sq.	Track "	612 "	13.61	45 "	22½ "
		2	" 1½" "	" "	402 "	7.655	52 "	26 "
		2	" 1¾" Sq.	" "	287 "	6.432	44 "	22 "
		2	" 1¼" "	" "	235 "	5.316	44 "	22 "

1	"	3"	"	Splitting Wedge Steel.	730	"	30.60	24	"	24	"
12	"	1"x3"	"	F. & B. Wedge Steel.	2300	"	10.24	224	"	18%	"
12	"	7/8"	Rd.	Cold Shut Steel.	562	"	2.046	274	"	23	"
12	"	1"	"	"	870	"	2.672	325	"	27	"
12	"	1 1/8"	"	"	1110	"	6.012	184	"	15 1/2 ft.	"
12	"	1 1/4"	"	"	1140	"	4.175	274	"	23	"
50	"	3/4"	Rd.	(ends painted red)	1620	"	1.503	1078	ft.	21	ft.
2	"	1"	"	Cold Shut Steel.	123	"	2.672	46	"	23	"
250	ft.	1 1/4"x6"	"	Roller Bearing Steel.	5985	"					
				(ends painted white)							
				Draw Head Steel.							
8	"	3"	Sq.	Bars cut in two.	30207	"	12 1/2¢	3775.88		8	"
8	"	4"	"	Die Steel, Ann.	257	"	30.60				
				(ends painted white)							
				Die Steel Ann.	446	"	54.45			8	"
					703	"	17¢	119.51			

\$3895.39

[Endorsed]: No. 1507. United States District Court, Western District of Washington. Neumeyer & Dimond vs. Polson Logging Co. Defendants' Exhibit "E," No. 2584. U. S. Circuit Court of Appeals for the Ninth Circuit. Defendants' Exhibit "E." Received and filed Mch. 18, 1915. F. D. Monckton, clerk.

[Defendants' Exhibit "F"—Invoice.
[Letter-head of Neumeyer & Dimond.]

February 6th, 1913.

Sold to Polson Logging Co.,
Hoquiam, Wash.

Shipped to

E

Terms 10 days 2% 30 days net.

Our Year Quantity Size

Number Number

2012 W-653 3 Bars 1½"x2½"

2 " 2" Rd.

2 " 1¾" "

1 " 2¼" "

7 " 1¾x4½" Rd.

2 " 1¼" Rd.

2 " 2½" "

2 " 2" "

2 " 5/16"x14"

2 " 2¾" Sq.

2 " 2" Rd.

2 " 2½" "

2 " 1 13/16" Rd.

1 " 1¼" Rd.

1 " 7/16"x3½"

25 " 1"x2"

1 " 5/8" Oct.

2 " 3/4" "

2 " 2" Sq.

2 " 1½" "

2 " 1¾" "

2 " 3" "

12 " 1"x3"

12 " 7/8" Rd.

12 " 1" "

12 " 1½" "

12 " 1¾" "

Weight Price Amounts Total

972 lb.

516 "

290 "

329 "

3135 "

233 "

798 "

691 "

650 "

1165 "

320 "

742 "

471 "

107 "

1112 "

3605 "

21 "

74 "

612 "

402 "

287 "

235 "

730 "

2300 "

562 "

870 "

1110 "

1140 "

Description

Swivel Steel,

Clevis "

Swivel Eye Steel

Choker Hook steel,

Block "

" "

Line "

(ends painted white)

Block Side Steel,

Sledge Steel,

Piston Rod Steel

(ends painted white)

Piston Rod, painted white

" "

Valve Rod Steel,

(ends painted white)

Locomotive Spring steel

Dog Hook Steel,

Cold Chisel "

" "

Track "

" "

" "

" "

Splitting Wedge steel,

F. & B. Wedge Steel,

Cold Shut Steel,

" "

" "

" "

(ends painted red)

Our Number	Your Quantity	Size	Description	Weight	Price	Amounts	Total
2012							
Req.							
# W-653	50 Bars	¾" Rd.	Cold Shut Steel,	1620 lb.			
	2 "	1" "	Roller Bearing Steel,	123 "			
			(ends painted white)				
	250 Ft.	1¼"x6"	Draw Head Steel,	5985 "			
	8 "	3" Sq.	Bars cut in two,	30207 "	12¼¢	3775 88	
			Die Steel, Ann.	257 "			
			(ends painted white)				
	8 "	4" "	Die Steel, Ann.	446 "			
				703 "	17 ¢	119 51	
							\$3895 39

[Endorsed]: No. 1507. United States District Court, Western District of Washington. Neumeyer & Dimond vs. Polson Logging Co. Defendants' Exhibit F.
 No. 2584. U. S. Circuit Court of Appeals for the Ninth Circuit. Defendants' Exhibit F. Received and filed Mch. 18, 1915. F. D. Monckton, Clerk.

[Defendants' Exhibit "G"—Summary.]

SUMMARY.

Size	Grade	Length Ordered.	Length Shipped	Diff.	Sur. Wgt. Shipped.	Short Wgt. Shipped.
1½ x 2½	Swivel Steel	60'	77' 2¼"	17' 2¼"	202 #	
2" Rd.	Clevis Steel	40'	48' 4½"	8' 4½"	89 #	
1¾ Rd.	do.	40'	57' 0½"	17' 0½"	87 #	
2¼ Rd.	Swivel Eye Steel	20'	24' 5½"	4' 5½"	60 #	
1¼ x 4½	Choker Hook "	20'	25' 5¾"	3' 5¾"	106 #	*2642 #
1¼ Rd.	Block " "	40'	53' 11½"	13' 11½"	60 #	
2½ Rd.	do.	40'	47' 2¼"	7' 2¼"	120 #	
2¼ Rd.	do.	40'	51' 3 "	11' 3 "	151 #	
5/16 x 14	Block Side Steel	40'	43' 4¾"	3' 4¾"	51 #	
2¾ Rd.	Sledge Steel.	40'	44' 6½"	4' 6½"	117 #	
2" Rd.	Piston Rod Steel	40'	29' 6½"	10' 5½"		114 #
2½ Rd.	" " "	40'	44' 8¾"	4' 8¾"	76 #	
1 13/16 Rd.	" " "	40'	53' 5½"	13' 5½"	119 #	
1¼ Rd.	Valve Rod Steel	20'	23' 1 "	3' 1 "	13 #	
7/16 x 3½	Loco Spring "	20'	22' 0¼"	2' 0¼"	10 #	
1 x 2	Dog Hook Steel	500'	532' 10 "	32' 10 "	222 #	
5/8 Oct.	Chisel Steel	20'	9' 4½"	10' 7½"		44 #
¾ "	" " "	40'	47' 4½"	7' 4½"	11 #	
3" Sq.	Track Chisel St.	40'	44' 3½"	4' 3½"	59 #	
1½ Sq.	" " "	40'	51' 9¾"	11' 9¾"	91 #	
1¾ Sq.	" " "	40'	44' 1 "	4' 1 "	28 #	
1¼ Sq.	" " "	40'	42' 10 "	2' 10 "	16 #	
3" "	Sledge Steel	20'	23' 8 "	3' 8 "	107 #	
1 x 3	" " "	240'	231' 2¾"	8' 9¼"		87 #
7/8 Rd.	Cold Shut Steel	240'	268' 10½"	28' 10½"	57 #	
1" "	" " "	240'	293' 11¾"	53' 11¾"	158 #	
1½ "	" " "	240'	328' 1½"	88' 1½"	288 #	
1¼ x 6	Draw Head Steel	250'	236' 1 "	13' 11 "		354 #
1¼	Cold Shut Steel	240'	275' 11 "	35' 11 "	175 #	
1"	Roller Bearing	40'	39' 1 "	11 "		4 #
¾ "	Cold Shut Steel	1000'	1078' 3¾"	78' 3¾"	117 #	
1¾ Oct.	Steel		11' 10 "		119 #	
					2709 #	
						3245 #

[Endorsed]: No. 1507. United States District Court, Western District of Washington. Neumeyer & Dimond vs. Polson Logging Co. Defendants' Exhibit G.

No. 2584. U. S. Circuit Court of Appeals for the Ninth Circuit. Defendants' Exhibit G. Received and filed Mch. 18, 1915. F. D. Monckton, Clerk.

[Defendants' Exhibit "H"—Account-Book.]

[Endorsed]: No. 1507. United States District Court, Western District of Washington. Neumeyer & Dimond vs. Polson Logging Co. Defendants' Exhibit "H."

No. 2584. U. S. Circuit Court of Appeals for the Ninth Circuit. Defendants' Exhibit "H." Received and filed Mch. 18, 1915. F. D. Monckton, Clerk.

$$\frac{11}{4} \times 6$$

$$1\frac{1}{2} \times 2\frac{1}{2}$$

1	13'	2"
2	12	7 $\frac{1}{2}$
3	13'	1 $\frac{1}{2}$
4	13'	1
5	13'	1
6	12'	3

$$1\frac{1}{4} \times 4\frac{1}{2}$$

1	12'	11'
---	-----	-----

2"	0
----	---

2	12'	7'
---	-----	----

1	7'	6'
2	7	5 $\frac{1}{2}$
3	7'	6 $\frac{1}{4}$
4	7'	5
5	12	2 $\frac{1}{2}$
6	12'	2 $\frac{1}{2}$
7	11'	8 $\frac{1}{2}$
8	12'	2 $\frac{1}{2}$

1 $\frac{1}{4}$	0
1 11'	5
2 11	6 $\frac{1}{4}$
3 11	2 $\frac{1}{4}$
4 11'	6
5 11'	4'
6 11'	3''
8 11	6 $\frac{1}{4}$
9 11'	2'
10 13'	2

11 ¹ / ₄	4	
11	11"	6
12	11	5 ¹ / ₄
13	11	5 ¹ / ₄
14	12'	8 ¹ / ₄
15	11"	11 ¹ / ₂
16	11"	1
17	11'	5
18	11	6
19	1	2 ¹ / ₂
20	11	6 ¹ / ₄

	$1\frac{1}{4}$	0
21	11	2
22	11	$5\frac{1}{2}$
23	11	$6\frac{1}{2}$
24	11	$3\frac{1}{2}$
25	11	8
26	11	6
27	13	$5\frac{3}{4}$
28	13	$6\frac{3}{4}$
29	$14'$	$11\frac{1}{4}$
30	14	6

1 ³ / ₈	0	
1	14'	4 ³ / ₄
2	14	13 ³ / ₄
3	14	11 ¹ / ₂
4	14'	4'

2 $\frac{1}{2}$	0
-----------------	---

5/14	x 14	Nason
------	------	-------

2 $\frac{1}{4}$	0	
1	12'	3
2	12	11 $\frac{1}{4}$
3	13	3 $\frac{3}{4}$
4	12	11
5	12'	3'
6	12	2 $\frac{1}{2}$

1	12'	8 $\frac{1}{2}$
2	11	5 $\frac{1}{2}$
3	10'	6
4	11'	1"
5	11	8 $\frac{3}{4}$
6	11	4 $\frac{1}{2}$
7	11	8 $\frac{1}{2}$
8	11	3 $\frac{1}{4}$

1	10'	1"
2	11'	11 $\frac{1}{2}$
3	11	2
4	11	11 $\frac{1}{2}$

$$2\frac{3}{4} \square$$

1	11	2'
2	11	2
3	11'	
4	11'	2

1	3/16	0
1	13	$3\frac{3}{4}$
2	13	$4\frac{3}{4}$
3	13'	$2\frac{1}{4}$
4	13'	5

7/16	x	$3\frac{1}{2}$
1	11	$1\frac{1}{2}$
2	10	$11\frac{1}{2}$

1	x	2
1	10	7
2	10	9
3	10	$8\frac{1}{4}$
4	10	$9\frac{1}{2}$
5	10	$7\frac{1}{2}$
6	10	$8\frac{1}{2}$
7	10	$8\frac{3}{4}$
8	10	$8\frac{3}{4}$
9	10	$8\frac{1}{4}$
10	10	$8\frac{1}{2}$

1	x	2
11	10	$6\frac{1}{2}$
12	10	$8\frac{1}{4}$
13	10	$7\frac{3}{4}$
14	10	7
15	10	11
16	10	$9\frac{1}{4}$
17	10	8
18	10	$8\frac{1}{2}$
19	10	7
20	10	5

1	x	2
21	10	$10\frac{1}{2}$
22	10	8
23	10	$7\frac{3}{4}$
24	10	$8\frac{1}{4}$
25	10	8
26	10	$7\frac{1}{2}$
27	10	$7\frac{1}{2}$
28	10	$6\frac{3}{4}$
29	10	$7\frac{1}{4}$
30	10	$6\frac{1}{4}$

1 x 2

31 10 8 $\frac{1}{4}$ 32 10 9 $\frac{1}{4}$ 33 10 6 $\frac{1}{2}$

34 10 8'

35 10 5

36 10 5 $\frac{3}{4}$ 37 10 9 $\frac{3}{4}$ 38 10 8 $\frac{3}{4}$ 39 10 7 $\frac{1}{2}$ 40 10 10 $\frac{1}{2}$

1 x 2

41 10 7

42 10 7 $\frac{1}{2}$ 43 10 10 $\frac{1}{4}$

44 10 6

45 10 6 $\frac{3}{4}$ 46 10 6 $\frac{1}{2}$ 47 10 10 $\frac{1}{4}$ 48 10 6 $\frac{1}{2}$ 49 10 6 $\frac{1}{2}$ 50 10 7 $\frac{1}{4}$ $\frac{5}{8}$ Oct

1 9' 5"

 $\frac{3}{4}$ Oct1 12' 2 $\frac{1}{2}$

2 12' 4

3 11' 5"

2' ☐1 11 10 $\frac{1}{2}$ 2 10' 9 $\frac{1}{4}$

3 11' 1"

4 10' 6 $\frac{3}{4}$

$1\frac{1}{2}$ \square

1 12' 3

2 13 $\frac{3}{4}$

3 13 $11\frac{1}{2}$

4 12 $6\frac{3}{4}$

$1\frac{3}{8}$ \square

1 11 4''

1 10 $5\frac{1}{2}$

3 10 $9\frac{1}{2}$

4 11 $6\frac{1}{4}$

$1\frac{1}{4}$ \square

1 9' 2''

2 9' 8

3 12

4 12

3' \square

1 11'' $9\frac{1}{2}$

2 11' $9\frac{1}{2}$

3 8' 3'

1 x 3

1 9 $4\frac{3}{4}$ 2 9 $4\frac{1}{4}$ 3 8 $4\frac{1}{4}$ 4 9 $9\frac{1}{4}$

5 9' 6'

6 9 $6\frac{3}{4}$ 7 9' $5\frac{3}{4}$

8 9 7

9 11 $11\frac{1}{4}$ 10 9 $5\frac{3}{4}$

1 x 3

11 9 4"

12 9 $4\frac{1}{2}$

13 9 8"

14 9 $5\frac{1}{4}$

15 9 6"

16 12 2

17 9 $6\frac{1}{4}$ 18 9 $6\frac{1}{2}$ 19 9 $5\frac{1}{4}$ 20 9 $5\frac{1}{4}$ 21 9 $2\frac{1}{2}$

22 9' 1

23 9' $5\frac{3}{4}$

24 9' 5'

$\frac{7}{8}$	0 mld	
1	11	$11\frac{3}{4}$
2	11	$6\frac{1}{2}$
3	11	$11\frac{1}{2}$
4	11	$4\frac{3}{4}$
5	11	$4\frac{1}{4}$
6	11	2
7	11	$2\frac{1}{4}$
8	12	$1\frac{1}{2}''$
9	11	$3\frac{1}{4}$
10	11	2
11	11	$3\frac{1}{2}$
12	12	
13	11	$1\frac{1}{2}$
14	11	$7\frac{1}{2}$
15	11	7
16	11	$9\frac{1}{2}$
17	12	
18	11	5
19	11	1
20	11	4
21	9	$7\frac{1}{2}$
22	9	$5\frac{1}{2}$
23	9	$7\frac{1}{2}$
24	9	$7\frac{3}{4}$

1' 0 mld

1 12 $10\frac{3}{4}$ 2 12 $3\frac{3}{4}$ 3 12 $1\frac{1}{2}$

4 12 10

5 12 2

6 12 $4\frac{3}{4}$ 7 12 $5\frac{1}{4}$

8 13 3

9 12 $3\frac{1}{2}$

10 12 4

11 12 2

12 13 1

13 11 $9\frac{1}{4}$ 14 10 $7\frac{1}{2}$ 15 12 $8\frac{1}{2}$ 16 12 $10\frac{1}{4}$

17 12 8

18 12 $2\frac{1}{2}$

19 12 3

20 12 $4\frac{1}{2}$ 21 12 $10\frac{1}{2}$

22 11 9

23 12 3

24 11 $9\frac{1}{4}$

25 12 1

26 12 4

27 12 $2\frac{3}{4}$

11 $\frac{1}{8}$	0 mld
1	14
2	14
3	13 11 $\frac{1}{2}$
4	13 11 $\frac{1}{2}$
5	14
6	13 10 $\frac{3}{4}$
7	13 11 $\frac{3}{4}$
8	13 8
9	13 11 $\frac{1}{2}$
10	13 21 $\frac{1}{4}$
11	14
12	13 11 $\frac{3}{4}$
13	14
14	13 13 $\frac{1}{4}$
15	12 11 $\frac{1}{4}$
16	13 4 $\frac{1}{4}$
17	13 3 $\frac{1}{2}$
18	13 4 $\frac{3}{4}$
19	12 10 $\frac{3}{4}$
20	14
21	13 4 $\frac{3}{4}$
22	13 1
23	13 11 $\frac{3}{4}$
24	13 11 $\frac{1}{2}$

$\frac{3}{4}$ 0 mld

10 $11\frac{1}{4}$

10 4

10 $4\frac{1}{2}$

10 1

8 4

9 11

9 $\frac{1}{2}$

11 10

11 9

12 $\frac{1}{2}$

10 $6\frac{1}{2}$

11 11

9 10

9 8

10 3

9 $\frac{1}{2}$

12 9

10 3

9 4

12 $\frac{1}{4}$

10 9

11 4

10 2

10 $4\frac{1}{2}$

9 2

9 5

10 1

8 2

9 $7\frac{1}{4}$

9 $8\frac{1}{2}$

$\frac{3}{4}$ 0 mld.
 7 $9\frac{1}{2}$
 9 $4\frac{1}{4}$
 9 $5\frac{1}{2}$
 11 $2\frac{1}{2}$
 10 $2\frac{1}{4}$
 9 $11\frac{1}{4}$
 9 6
 11 $\frac{1}{2}$
 9 $11\frac{1}{2}$
 9 1
 9 11
 11 10
 9 $11\frac{1}{2}$
 12 8
 10 $9\frac{3}{4}$
 11 11
 9 $6\frac{3}{4}$
 9 $10\frac{1}{4}$
 10 11
 12 $8\frac{1}{2}$
 14 $11\frac{3}{4}$
 15 $1\frac{1}{2}$
 12 5
 10 3
 15 $4\frac{3}{4}$
 12 $8\frac{1}{2}$
 10 $10\frac{1}{2}$
 11 $3\frac{1}{2}$
 10 $11\frac{1}{2}$

$\frac{3}{4}$ 0 mld.	$\frac{3}{4}$ 0 mld.
9 10 $\frac{1}{4}$	12' 1
11 7	9 5 $\frac{3}{4}$
11 10	10 5 $\frac{1}{2}$
10 2	12 3
10 4 $\frac{1}{2}$	10 9 $\frac{1}{2}$
10 3 $\frac{1}{2}$	9 6 $\frac{1}{2}$
11 7	10 11 $\frac{1}{2}$
10 10 $\frac{1}{2}$	13 2
10 4	14 8
10 3 $\frac{1}{2}$	11 2
14 3 $\frac{3}{4}$	14 8
9 11	<hr/>
9 7	17 $\frac{7}{8}$ October
10 11 $\frac{1}{2}$	11 10
11 2	
14 9	
12 5	
10 9 $\frac{1}{4}$	
10 5 $\frac{1}{2}$	
10 5 $\frac{1}{4}$	
9 9	
12 9 $\frac{1}{4}$	
8 5 $\frac{1}{2}$	
8 7 $\frac{1}{2}$	
11 2 $\frac{1}{4}$	
9 4 $\frac{1}{2}$	
9 10 $\frac{1}{2}$	
9 7	
9 11	
8 3	

$1\frac{1}{4} \times 6$ tank

1	9	9
2	9	$6\frac{1}{2}$
3	9	5
4	9	8
5	9	7
6	9	$7\frac{1}{2}$
7	9	10
8	9	3
9	9	$3\frac{1}{2}$
10	9	2
11	9	6
12	9	$10\frac{3}{4}$
13	9	$\frac{1}{2}$
14	9	$3\frac{1}{4}$
15	9	$3\frac{1}{2}$
16	9	$6\frac{1}{2}$
17	9	$3\frac{1}{2}$
18	9	$3\frac{1}{4}$
19	9	7
20	9	$8\frac{1}{2}$
21	9	$11\frac{1}{2}$
22	9	7
23	9	$4\frac{1}{2}$
24	9	$5\frac{1}{2}$
25	9	$3\frac{1}{2}$

4' ☐

1 8 $11\frac{1}{2}$

GEO. J. MILL

4802 So M Street

Tacoma

377 bars

$2\frac{3}{4}$	<input type="checkbox"/>	2'	<input type="checkbox"/>	3'	<input type="checkbox"/>
1	11' 2"	#1	11' 10 $\frac{1}{2}$	#1	11' 9 $\frac{1}{2}$
2	11' 2"	2	10 9 $\frac{1}{4}$	#2	11' 9 $\frac{1}{2}$
3	11'			#3	8' 3
4	11' 2"				
	11 $\frac{1}{4}$ x 4 $\frac{1}{2}$				
1	12' 11"			4'	<input type="checkbox"/>
2	12' 7"			#1	8' 11 $\frac{1}{2}$

11 $\frac{1}{4}$ x 6

25 Bas

1	9' 9	#11	9' 6'	21	9' 11 $\frac{1}{2}$
2	9' 6 $\frac{1}{2}$	12	9' 10 $\frac{3}{4}$	24	9' 7
3	9' 5"	13	9' 1 $\frac{1}{2}$ "	23	9' 4 $\frac{1}{2}$
4	9' 8"	14	9' 3 $\frac{1}{4}$	24	9' 5 $\frac{1}{2}$
5	9' 7	15	9' 3 $\frac{1}{2}$	25	9' 3 $\frac{1}{2}$
6	9' 7 $\frac{1}{2}$	16	9' 6 $\frac{1}{2}$		
7	9' 10	17	9 3 $\frac{1}{2}$		
8	9' 3	18	9 3 $\frac{1}{4}$		
9	9 3 $\frac{1}{2}$	19	9 7		
10	9' 2	20	9 8 $\frac{1}{2}$		

Unusual Rld

5/16 x 14	1	10'	1"
	#2	11	11 $\frac{1}{2}$
	3	11'	2
	4	11	11 $\frac{1}{2}$

[**Defendants' Exhibit "I"—Letter.**]

Polson Logging Company,
Hoquiam, Wash.

Gentlemen:

Enclosed please find copy of letter received to-day
from the Northern Pacific Railway Company.

Respectfully yours,
NEUMEYER & DIMOND.
A. J. DIMOND.

AJD/GS

Enclosure (1)

COPY.

Tacoma, Wash., May 10, 1913.

In your reply please quote.
File No. L—6059 Desk 7.

Neumeyer & Dimond,
New York City.

Gentlemen:

I have a copy of your invoice dated February 6th,
1913, covering shipment of one car of steel, con-
signed to Polson Logging Company, Hoquiam,
Wash.

This shipment arrived at Hoquiam on March 11th,
and same was refused by consignee account they
claim not ordered. Shipment has now been un-
loaded from car to release shipment, and is now on
hand at Hoquiam in storage, and any further
charges which accrue, *with*er from storage or dam-
age, will be charged against this shipment.

Would be pleased to have you furnish us with disposition at the earliest possible date.

Yours truly,

J. M. MOONEY,

A. F. C. A.

[Endorsed]: No. 1507. United States District Court, Western District of Washington. Neumeyer & Dimond vs. Polson Logging Co. Defendants' Exhibit "I."

No. 2584. U. S. Circuit Court of Appeals for the Ninth Circuit. Defendants' Exhibit "I." Received and filed Mch. 18, 1915. F. D. Monckton, Clerk.

[Defendants' Exhibit "J"—Letter (Copy).]

COPY.

June 6, 1913.

Messrs. Neumeyer & Dimond,
82 Beaver Street,
New York, N. Y.

Gentlemen:

Your favor of June 2nd to hand, and in reply will say that our Mr. Shaw never had authority from our concern to buy a carload of steel from anyone, much less from your concern; and besides, according to your own bill there are a great many sizes of steel in it that have never been used, and cannot be used by our Company, which should make it clear to any reasonable firm that the order in question was never placed by our firm.

Very truly yours,

POLSON LOGGING COMPANY,

By _____,

AP—A.

President.

[Endorsed]: No. 1507. United States District Court, Western District of Washington. Neumeyer & Dimond vs. Polson Logging Co. Defendants' Exhibit "J."

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